



Transcript of Amy McCart, Ph.D.

Tuesday, October 24, 2023

United States of America v. State of Georgia

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Reference Number: 134597

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 - - - - - X
5 UNITED STATES OF AMERICA, :
6 Plaintiff, : Civil Action No.
7 v. : 1:16-cv-03088-ELR
8 STATE OF GEORGIA, :
9 Defendant. X

10 - - - - -
11 TUESDAY, OCTOBER 24, 2023

12 Videotaped Deposition of AMY McCART,
13 Ph.D., a witness herein, called for examination by
14 counsel for defendant in the above-entitled matter,
15 pursuant to notice, the witness being duly sworn by
16 Desirae S. Jura, a Notary Public in and for the
17 District of Columbia, held at the offices of United
18 States Attorney's Office, 150 M Street, N.E.,
19 Washington, DC, at 9:14 a.m., ET, Tuesday, October
20 24, 2023, and the proceedings being taken down by
21 Stenotype by Desirae S. Jura, RPR, and transcribed
22 under her direction.

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2

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13 APPEARING REMOTELY VIA ZOOM:

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17 DANIELLE HERNANDEZ (State of Georgia)

18 STACEY SUBER-DRAKE (State of Georgia)

19 CHANTEL MULLEN (State of Georgia)

20

21 ALSO PRESENT:

22 APRIL CARTER, Videographer

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C O N T E N T S

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AMY McCART, Ph.D. DEFENDANT
BY MR. BELINFANTE 9

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: We are now on the
3 record in the matter of United States of America
4 versus State of Georgia. Today's date is October
5 24th. The time is 9:14 a.m. This is the video
6 recorded deposition of Dr. Amy McCart, being taken at
7 U.S. Department of Justice, 150 M Street, Northeast,
8 Washington, DC, 20002.

9 I'm the camera operator. My name is April
10 Carter, in association with TP.One. The court
11 reporter is Desirae Jura, also in association with
12 TP.One.

13 Will all attorneys please identify
14 themselves and the parties they represent, beginning
15 with the party noticing this proceeding. And I'll
16 repeat it for our remote guests.

17 MR. BELINFANTE: Josh Belinfante,
18 representing the State of Georgia.

19 MS. JOHNSON: Melanie Johnson,
20 representing the State of Georgia.

21 MS. TUCKER: Michelle Tucker for the
22 United States.

1 MR. GILLESPIE: Matthew Gillespie for the
2 United States.

3 MS. LILL: Victoria Lill for the United
4 States.

5 MS. GARDNER: Kelly Gardner for the United
6 States.

7 MS. TAYLOE: Laura Tayloe for the United
8 States.

9 THE VIDEOGRAPHER: Thank you. And will
10 remote attorneys please identify themselves?

11 MS. CHEVRIER: Claire Chevrier for the
12 United States.

13 MS. WATSON: Andrea Hamilton Watson for
14 the United States.

15 MR. PRATS: Javier Pico Prats for the
16 State of Georgia.

17 MS. HERNANDEZ: Yeah, we've got Danielle
18 Hernandez on behalf of the State of Georgia. And
19 then we've got Stacey Suber-Drake and Chantel on
20 behalf of the State of Georgia. They're corporate
21 representatives.

22 THE VIDEOGRAPHER: Thank you. And will

1 the court reporter please administer the oath?

2 Whereupon,

3 AMY McCART, Ph.D.,

4 having been duly sworn by the Notary Public, was

5 examined and testified as follows:

6 EXAMINATION BY COUNSEL FOR DEFENDANT

7 BY MR. BELINFANTE:

8 Q. Good morning, Dr. McCart.

9 A. Good morning.

10 MR. BELINFANTE: This is the deposition of
11 Dr. Amy McCart, taken by the defendant, the State of
12 Georgia, for purposes of discovery and all purposes
13 allowed under the Federal Rules of Civil Procedure.
14 Michelle has previously agreed, all objections except
15 those going to privilege and the form of the question
16 be reserved until the time of trial or use of the
17 deposition.

18 MS. TUCKER: Yes, agreed.

19 BY MR. BELINFANTE:

20 Q. Okay. Dr. McCart, have you ever been
21 deposed before?

22 A. No.

1 Q. So there's just some kind of basic rules
2 that we'll try to follow, and I just want to make
3 sure they're agreeable to you.

4 A. Okay.

5 Q. Most importantly, we have to make sure the
6 court reporter gets everything said. So I will
7 certainly try not to talk over you, and ask that you
8 not try to talk over me. It's a natural thing in
9 conversation, but we'll have to stop if we do that,
10 so that the court reporter can get an accurate
11 record. Is that okay?

12 A. Okay.

13 Q. All right. Also, and I've had this
14 problem, witnesses will often answer things like
15 "uh-huh" or "huh-uh," which does not come across on a
16 trial transcript well. So if you could answer "yes"
17 or "no," as opposed to those kind of answers. Would
18 that be okay?

19 A. Yes.

20 Q. We can take a break whenever you want.
21 The only question -- or the only request I would have
22 is that if I have a question outstanding, if you

1 could answer the question, and then we can take a
2 break. Is that agreeable?

3 A. Sure, yes.

4 Q. I am not going to try to ask confusing
5 questions. I do not always succeed in doing that.
6 And I will, you know, frequently catch myself. But
7 if a question is confusing, please feel free to ask
8 me to rephrase it, or if you don't understand what
9 I'm asking. Is that also agreeable?

10 A. Yes.

11 Q. Okay, great. So with that in mind, what
12 did you do to prepare for today's deposition?

13 A. To prepare for today's deposition, it
14 actually started a long time ago with site visits,
15 and evaluation of thousands of documents, and review
16 of deposition transcripts, and resulting in the
17 compilation of the report.

18 And then more recently, additional review
19 of the report in preparation for today, and meeting
20 with the Department of Justice.

21 Q. Okay. I'm specifically not asking for any
22 conversations you had with the Department of Justice.

1 But independent of what you did to prepare for the
2 report, to prepare for today's deposition, and
3 understanding it's been rescheduled a couple times.

4 A. Yes.

5 Q. How much time do you think you spent with
6 the Department of Justice to prepare for your
7 deposition testimony?

8 A. I don't recall -- I don't have a specific
9 number, but probably more than ten hours.

10 Q. And let me go ahead and introduce your
11 report as an exhibit. We'll mark it as Exhibit 1.

12 (McCart Exhibit No. 1 was identified
13 for the record.)

14 MR. BELINFANTE: We'll mark this one as
15 the exhibit, and presuming -- I presume they're the
16 same.

17 MS. TUCKER: Yeah.

18 THE WITNESS: I'm happy to use --

19 MR. BELINFANTE: Use that if it's easier.
20 That's totally fine. If we see that there's an
21 issue, we can clarify it.

22 BY MR. BELINFANTE:

1 Q. Okay. Is this the report that you
2 prepared for this lawsuit?

3 A. Yes.

4 Q. Okay. And attached to this report is an
5 Exhibit or Appendix, I believe, E; is that correct?

6 A. Yes.

7 Q. And Appendix E is the materials -- where
8 you've identified the materials you considered for
9 the report?

10 A. I am turning to that right now.

11 Q. And I'm not trying to trick you. There is
12 an --

13 A. I know. Yes, Exhibit E are the materials
14 considered for this report.

15 Q. Let me introduce what we'll mark as
16 Exhibit 2, which is, I believe, the amended Appendix
17 E. Let me show you what we may mark as Exhibit 2.
18 And if you'll tell me if that's the amended one,
19 because it looks the same to me.

20 A. This is the amended one.

21 Q. That is the amended, okay.

22 A. The one you have.

1 Q. The one that I have --

2 A. The one you handed me.

3 Q. The one I just handed you?

4 A. Yes.

5 Q. Okay. Let's mark the document we just
6 handed her as Exhibit 2.

7 (McCart Exhibit No. 2 was identified
8 for the record.)

9 THE WITNESS: And I'm feeling like I
10 should use the report you have.

11 MR. BELINFANTE: It's your call, whatever
12 you would prefer to use.

13 MS. TUCKER: We can just -- if you want to
14 use that one.

15 BY MR. BELINFANTE:

16 Q. Dr. McCart, I know there have been some
17 developments or things that have happened since you
18 provided both the Appendix E and amended Appendix E.
19 Have you read in this case the Department of
20 Justice's partial motion for summary judgment?

21 A. No.

22 Q. Did you read Dr. Wiley's report filed on

1 behalf of the state?

2 A. No.

3 Q. Did you read Dr. Putnam's report filed on
4 behalf of the United States?

5 A. No.

6 Q. Are you familiar with a companion -- well,
7 I'll call it companion -- are you familiar with a
8 lawsuit also against Georgia over GNETS, brought by
9 the Georgia Advocacy Office and other advocacy
10 groups?

11 A. Yes.

12 Q. Did you read any of the expert reports
13 that have been submitted in that case?

14 A. No.

15 Q. Are you familiar with Kimm Campbell from
16 Florida?

17 A. I don't believe so.

18 Q. Okay. Broward County, specifically.

19 A. No, that doesn't sound familiar.

20 Q. Are you familiar with Dr. Judy Elliott
21 from Los Angeles?

22 A. Yes.

1 Q. Are you familiar with her work?

2 A. Yes.

3 Q. Okay. I may have other questions about
4 that. You're testifying today --

5 A. Sir, I just want to clarify. I don't
6 know -- did you say her name was Kim?

7 Q. Kimm, K-I-M-M, Campbell?

8 A. Yeah. She may know me.

9 Q. Sure.

10 A. I don't know her.

11 Q. Okay. You are testifying today -- it says
12 on page 1 of your report that you have been "retained
13 to present expert testimony in this matter on behalf
14 of the United States." That's paragraph 1 of your
15 declaration. Do you see that?

16 A. Yes.

17 Q. Was that based on a contract?

18 A. Yes.

19 Q. Is the contract with you individually,
20 with Kansas University, or someone else?

21 A. It's University of Kansas, but the
22 contract is with me.

1 Q. Okay. Outside of the travel to Georgia,
2 so once you traveled and collected information, how
3 long did you spend preparing your report?

4 A. Oh, that is a difficult question. Many,
5 many, many hours.

6 Q. And would that be reflected in an invoice
7 or bills sent to the United States?

8 A. Yes.

9 Q. Okay. Who contacted you about preparing a
10 report in this lawsuit?

11 A. Ms. Lill.

12 Q. Okay. Did you know Ms. Lill prior to your
13 work in this case?

14 A. No.

15 Q. Okay. You do work, though, for the United
16 States Department of Education, is that correct, or
17 "with," I should say?

18 A. The center that I direct at the University
19 of Kansas receives funding through grants, like many
20 universities, to do work on behalf of the Department
21 of Education.

22 Q. Okay. And what's the name of the center?

1 A. SWIFT Center, SWIFT Education Center.

2 Q. All right. When Ms. Lill reached out to
3 you, did she tell you -- or let me ask this. Do you
4 know roughly when she reached out to you about
5 providing an expert report in this case?

6 A. Yes.

7 Q. When was that?

8 A. In May of 2016, Ms. Lill contacted me to
9 see if I would be willing to serve as an expert
10 witness on this case.

11 Q. Okay. And obviously you said yes?

12 A. Yes.

13 Q. So my question is, why did you say yes?

14 A. Because I was asked.

15 Q. In your words, what is this lawsuit about?

16 A. In my words, this lawsuit is about the
17 issues of whether or not students who have
18 disabilities in the State of Georgia, who have
19 behavior-related disabilities in the State of Georgia
20 are segregated en masse, whether or not students with
21 behavior-related disabilities in the State of Georgia
22 in the GNETS program are given fair and equal

1 educational opportunities, and whether or not
2 students with behavior-related disabilities in the
3 GNETS program, or at risk for placement in the GNETS
4 program, have appropriate supports and services. And
5 whether or not the GNETS program is necessary to meet
6 their educational needs.

7 Q. Is it your opinion that the existence of
8 the GNETS problem -- or excuse me, the existence of
9 the GNETS program is a, per se, bad policy?

10 MS. TUCKER: Object to form.

11 THE WITNESS: I don't know what you're
12 asking. I'm sorry.

13 BY MR. BELINFANTE:

14 Q. Is there -- do you believe that there is
15 an appropriate role for a program like GNETS, ever?

16 A. No, not for GNETS, specifically. If
17 you're asking whether or not it's appropriate to ever
18 segregate students, yes.

19 Q. And is that based on the individual needs
20 of the student?

21 A. It's based on a variety of variables,
22 including the teaching and learning process, how

1 students learn, what context they're in, what
2 supports are provided, what strategies are effective
3 in supporting their needs, et cetera.

4 Q. And would you base that on an individual
5 student or would you apply that to populations of
6 students? In other words, for example, would you say
7 all autistic kids, X, either should be educated in
8 the general education setting or could be
9 appropriately educated in a segregated setting, or is
10 it based on that individual student?

11 MS. TUCKER: Object to form. You can
12 answer.

13 THE WITNESS: The question you're asking
14 is very complex. And it's complex because there are
15 a multitude of variables in which students with
16 disabilities, particularly who have behavior-related
17 needs, can and do succeed in educational
18 circumstances.

19 It is, in part, important to understand
20 those individual needs of the students. It is also
21 equally important to have a system of support that is
22 built and established for students to access.

1 BY MR. BELINFANTE:

2 Q. If a student -- under what circumstances
3 do you believe that a student would appropriately be
4 served in a segregated educational setting?

5 A. I have worked for many, many years, just
6 to give you a little context, with students with a
7 variety of very significant behavioral challenges and
8 disabilities. And what I found to be the case is in
9 very limited numbers, there are certain students who
10 benefit from small environments that have very
11 structured learning opportunities, and exposure to
12 time in general education classrooms, that have less
13 noise or stimuli in that environment, and that have
14 access to highly trained specialized educators who
15 can support their needs.

16 Q. You said highly trained, specialized
17 educators. What would their training be?

18 A. Teachers, certified educators, certified
19 teachers in special education and general education
20 that have an understanding of both standards-based
21 teaching, effective behavioral supports, effective
22 teaching and learning processes, understanding, for

1 example, positive behavior interventions and
2 supports, restorative practices, MTSS, effective
3 behavior intervention plans, effective and complete
4 functional -- timely functional behavior assessments,
5 and effective crisis -- individualized crisis
6 intervention plans associated with their behavior
7 plan.

8 Q. Okay.

9 A. To name a few.

10 Q. Sure. For teachers who are not that
11 highly trained, specialized educators, a teacher in a
12 sixth grade class, general education class.

13 A. Sure.

14 Q. What type of training is it your opinion
15 that they would have to have, in order to prevent
16 unnecessary segregation of students with emotionally
17 disturbed behavior?

18 A. I'm going to ask you to break that down.
19 But, first, I would say that we probably want to say
20 students who have emotional behavior disorders.

21 Q. Okay.

22 A. And then I believe you're asking the

1 question, what would a sixth grade educator --
2 general education teacher need, in order to prevent
3 large-scale segregation of students with disabilities
4 in the State of Georgia?

5 Q. Sure, you can answer that. That's a good
6 question. I'm not sure it's exactly what I asked,
7 but that's a great place to start.

8 A. Okay. I don't think an individual
9 teacher, in and of themselves, could prevent
10 large-scale systemic segregation. That's an issue of
11 the system at large, not one individual teacher.

12 Q. Okay. What type of training would that
13 same teacher need to prevent the unnecessary
14 segregation of an individual student? So not looking
15 systemically, but at an individual student with --
16 and I don't want to -- I'm not -- the phrase you
17 used, emotional --

18 A. Behavior disorders.

19 Q. Behavior disorders.

20 A. Yeah.

21 Q. Okay.

22 A. Effective supports for students with

1 disabilities who have behavior-related needs respond
2 best to having general educators who understand high
3 expectations, effective teaching and learning
4 practices. All of the typical educational
5 credentials that I previously mentioned that are
6 common for certified educators.

7 Additionally, they would need access from
8 special educators that have the additional variables
9 that I mentioned earlier, which include special
10 educators that understand, for example, functional
11 behavior assessment, behavior intervention programs,
12 crisis intervention plans, and effective teaching.

13 In addition, those individuals would need
14 to understand basic general systems of support
15 provided through the state and the district, such as
16 tiered systems of support that provide academic,
17 behavioral, social, emotional, and mental health
18 supports.

19 Did that get at what you wanted?

20 Q. I think so. You said one of the things
21 they need is effective practices. Can you identify
22 those practices?

1 A. Effective teaching practices?

2 Q. Mm-hmm.

3 A. Sure. Effective teaching practices
4 include positive interactions. It includes -- I'm
5 trying to think what I referenced in the report,
6 specifically. Do you mind if I look for a minute?

7 Q. Go right ahead.

8 A. Where I'm turning is to finding 2, in
9 which I discuss the unfair and unequal access to
10 educational opportunities. And specifically, page
11 108, where I talk about what I observed to be missing
12 when doing the extensive site visits that I went on.

13 And so one way of answering this question,
14 and there's a multitude of ways, but would be to
15 think about the inverse of what is stated here.

16 So instead of grade inappropriate
17 resources, general and special educators would have
18 access to grade appropriate resources for students
19 who have disabilities or experience behavior-related
20 disabilities. They would have access to grade level
21 curriculum that is not functional, but rather
22 standards-based.

1 They would have teachers who understand
2 alternate assessment and alternate standards for
3 teaching of students with disabilities. For example,
4 like on page 110. They would have master schedules
5 that allowed students to access learning environments
6 that were purposeful and meaningful, rather than
7 functional.

8 They would have an understanding of
9 effective ways to teach students with disabilities
10 with varying learning styles and needs. They would
11 have lesson plans in place -- and again, this is all
12 standard for teachers in the field of education, what
13 I'm describing here.

14 They would do content mapping. And they
15 would provide, again, teaching aligned to standards
16 in the State of Georgia. They would have learning
17 content and resources available to them, to name a
18 few.

19 Q. How many general education schools did you
20 review?

21 A. 36.

22 Q. 36, okay. And in doing so, did you look

1 at the factors you just identified?

2 A. Yes.

3 Q. And which schools were those? Could I
4 find those in the report?

5 A. Yes, mm-hmm.

6 Q. Where?

7 A. If you turn to Appendix A, I believe, but
8 let me confirm that. D.

9 Q. D.

10 A. The site visit table.

11 Q. Right.

12 A. If you look at that table at the bottom
13 of -- your copy's a little -- it's got some extra
14 color in it, which is okay. But if you look at page
15 7, the bottom of that site visit table, the 70
16 different sites, you can see a code that indicates
17 which sites we went to, which were repeats, et
18 cetera, per the -- per the chart.

19 Q. Right. Now, these look to me, at least
20 the majority are GNETS facilities, correct?

21 A. Yes.

22 Q. My question was about general education

1 programs, not GNETS programs. How many general
2 education programs did you look at in the State of
3 Georgia?

4 A. Well, there are 36 GNETS program located
5 at school-based sites, or near school-based sites.
6 And they're considered connected in some form or
7 fashion to general education sites. While touring
8 the GNETS wing, or area, or part of the school that
9 was the GNETS part, I was also able to tour the
10 general education part.

11 Q. And in touring the general education part,
12 did you review files of individual teachers to
13 determine their qualifications and training?

14 A. No.

15 Q. Did the Department of Justice ask you to
16 make any assumptions or presumptions in preparing
17 your report?

18 A. No.

19 Q. Prior to being contacted by the Department
20 of Justice in this case, have you ever provided
21 consulting services in the State of Georgia?

22 A. No.

1 Q. And let me rephrase that, just to make
2 sure it's clear.

3 Have you ever advised a Georgia school
4 district or school?

5 A. No.

6 Q. Okay. And have you ever provided
7 consulting services to the Georgia Department of
8 Education?

9 A. No.

10 Q. To your knowledge, has SWIFT or anyone
11 associated with SWIFT ever provided consulting
12 services to the State of Georgia Department of
13 Education?

14 A. I cannot speak to what affiliations all of
15 SWIFT people have, so I don't know that.

16 Q. Okay. Prior to being contacted by the
17 Department of Justice in this case, had you ever been
18 contacted about special education in Georgia in,
19 let's say, the last eight years?

20 A. Not that I recall.

21 Q. You mentioned earlier that the United
22 States Department of Education provides grant funding

1 to SWIFT.

2 A. I'm sorry, can you start over?

3 Q. Sure. You mentioned earlier that the
4 United States Department of Education provides a
5 grant to SWIFT; is that correct?

6 A. I'll clarify, but keep going.

7 Q. Go ahead and clarify.

8 A. Okay, so the Department of Education
9 Office of Special Education provides funding -- a
10 national competition for funding, in which we were
11 awarded.

12 Q. In working as part of that grant, do you
13 often work with persons at the Department of
14 Education -- United States Department of Education
15 Office of Special Education?

16 A. And I'll add one. There's also the
17 effective educator development funding source.

18 Q. Okay.

19 A. We have several funding sources.

20 Could you ask that again?

21 Q. Sure.

22 A. Yeah, sorry.

1 Q. In working with the national competition
2 for funding from the Office of Special Education, or
3 the effective education funding that you just
4 mentioned, have you worked with officials at the
5 United States Department of Education?

6 A. Whenever there is a federal grant awarded
7 to a university, regardless of what university, there
8 is a project officer that is assigned from that
9 funding pool. And that project officer is who we
10 communicate with --

11 Q. Okay.

12 A. -- regarding the project.

13 Q. Do you communicate with anyone else at the
14 Department of Education, other than the project
15 officer, about the work funded by the grant or
16 grants?

17 A. Can you ask that again?

18 Q. Sure. Other than the project officer in
19 your work in implementing the grants, or you know,
20 working pursuant to the grants.

21 A. Mm-hmm.

22 Q. Do you work with anyone at the United

1 States Department of Education, other than the
2 project officer?

3 A. Not that I can recall.

4 Q. Do you know if you have had any
5 conversations with a project officer about the State
6 of Georgia?

7 A. Only that I am an expert witness.

8 Q. To your recollection, has anyone from the
9 United States Department of Education expressed
10 concerns to you about the State of Georgia?

11 A. No.

12 Q. Are you familiar with an individual named
13 Katie Owens from the State of Georgia?

14 A. Not that I recall.

15 Q. How about Kimberly Smith, also from the
16 State of Georgia?

17 A. Meaning have I met her?

18 Q. Met or talked to, know anything. Does the
19 name mean anything to you?

20 A. No.

21 Q. Okay.

22 A. And forgive me for looking. I have a lot

1 of people, a lot of documents.

2 Q. I totally understand.

3 A. You know, a lot.

4 Q. Yes, absolutely. And you may certainly
5 feel free to do so.

6 A. Thank you.

7 Q. No need to apologize for it. Let me ask
8 you to look at Exhibit 2, which is your amended
9 exhibit E.

10 A. Mm-hmm.

11 Q. At the last several pages, there is a
12 chart.

13 A. Yes.

14 Q. Do you know -- and I point to that,
15 because on the third page of the chart, about two
16 thirds of the way down, you've got a document Bates
17 labeled GNET000381 to 382, with the label Student IEP
18 file.

19 A. 381 to 382, Student IEP file, yes, I see
20 that.

21 Q. And then 2 under that is another Student
22 IEP file.

1 A. Yes.

2 Q. Right?

3 A. Mm-hmm.

4 Q. If you go -- skip the next page, and go to
5 the one after that, there's a document -- the first
6 one of which -- just so we're on the same page,
7 289606 is the first document on the page I'm
8 referring to.

9 A. 209 or 289?

10 Q. 289606.

11 A. Yes, mm-hmm.

12 Q. About two-thirds of the way down, there is
13 another document, US0306845, which is RF Student
14 Records.

15 A. Say the number again, please?

16 Q. US0306845.

17 A. 68 -- oh, yeah, mm-hmm.

18 Q. Okay. And I went through that, because
19 those were the times I saw IEP team or student record
20 in the doc file name.

21 A. Sure.

22 Q. Can you recall how many IEPs you examined

1 when preparing your report for the state of -- or for
2 the United States?

3 A. Not exactly. It was a large number.
4 Likely, I'd say more than 65 IEPs. And the labeling
5 on the chart that you just read did not always match
6 what was in the file.

7 Q. Okay.

8 A. And probably more than 100, but that's my
9 best guess. Somewhere between 65 and 100 individual
10 student IEP records.

11 Q. Did you choose which IEPs to look at or
12 was it a random -- well, how did you choose which 100
13 to look at?

14 A. I reviewed every IEP that was provided.
15 Every document you see here, I reviewed.

16 Q. Did you ask for these documents or were
17 they provided to you?

18 A. I provided a list of the kind of documents
19 that I would need to review, in order to conduct an
20 evaluation of the scale and magnitude.

21 Q. And is it fair to say that if a document
22 is not listed in Exhibit 2, amended Appendix E, it

1 was not considered when making your report?

2 A. That's correct.

3 Q. In your words, what do you understand the
4 United States to be seeking as a remedy or as a
5 judicial order in this lawsuit?

6 A. I can only speak to what I have been asked
7 to do as a special educator in this case. And in
8 terms of my recommendations, I can speak to those. I
9 can't speak to what the Department is trying to do.

10 Q. You have read the complaint in this case,
11 though, correct?

12 A. Yes.

13 Q. Okay. Generally, what do you understand
14 the United States to be seeking in this lawsuit, not
15 remedy or judicial order, if that's what threw you
16 off, but generally, what do you see the aims of the
17 lawsuit to be?

18 A. Unless you have the complaint for me to
19 look at, what I can say is that as an educator and
20 within the scope of my report -- and again, this is
21 just what I can remember right here, right now, in
22 the middle of all of this -- is that the

1 recommendation is -- from my perspective, is to limit
2 or eliminate systemic segregation across the State of
3 Georgia within the GNETS program, to provide fair and
4 equal educational opportunities for students with
5 behavior-related disabilities in the GNETS program,
6 and to have the State of Georgia provide an array of
7 appropriate supports for students with
8 behavior-related disabilities in the State of
9 Georgia.

10 Q. How does one define appropriate supports
11 in this context?

12 A. Yes, that's a really, really big question.

13 Q. Sure.

14 A. So I'm thinking I should take a break and
15 run to the restroom, but if you want me to answer it
16 first, I can.

17 Q. Why don't we do this. I want to allow you
18 to do that for sure. Let me ask it this way, and
19 maybe it can be a shorter answer.

20 A. Sure.

21 Q. If a judge is to order that the State of
22 Georgia provide appropriate supports, what does that

1 look like in a judicial order? I'm not asking you to
2 get into legalese, but, like, if the State of Georgia
3 is trying to implement an order that says, provide
4 appropriate supports, what does that look like?

5 MS. TUCKER: Object to form.

6 THE WITNESS: Okay. Again, I can speak to
7 based on my experience with state education agencies,
8 over 20 states in the U.S., what I can say in terms
9 of the role of the state in providing appropriate
10 supports, which is, in general, a system of support
11 that provides array of effective evidence-based
12 practices for -- specifically for students who have
13 disabilities that are along a continuum of support,
14 not place-based, but rather service-based.

15 And those supports are provided in the
16 context, based on what the state decides on
17 student -- students with disabilities needs within
18 the GNETS program.

19 So what the state does -- decides to do is
20 up to them. I have made some recommendations, based
21 on my experience that -- what has worked for
22 supporting students with disabilities in other states

1 in the United States, but what they decide to do is
2 their decision.

3 MR. BELINFANTE: Let's take a break, then.

4 THE WITNESS: Thank you.

5 THE VIDEOGRAPHER: Off the record. The
6 time is 9:54.

7 (Recess.)

8 THE VIDEOGRAPHER: On the record at 10:02.

9 BY MR. BELINFANTE:

10 Q. Dr. McCart, let me start with some kind of
11 general questions about your report, and specifically
12 what it is not about.

13 You have no formal legal training,
14 correct?

15 A. No.

16 Q. Okay. So you're not opining whether the
17 State of Georgia complies with the Americans With
18 Disabilities Act or not; is that right?

19 A. I'm not talking about the legalities in
20 this case, that's correct.

21 Q. Okay. And your report is not about any
22 individual student; is that right?

1 A. That is not right.

2 Q. Okay, which individual students do you
3 offer an opinion about?

4 A. I offer an opinion about the nearly 3,000
5 students that are served in the program, specifically
6 the thousands -- the thousand or so that I observed
7 directly. But also, there are examples in the
8 report, in which I detail very specific individual
9 student cases for review.

10 Q. And did you -- for the thousands of
11 students you observed directly, you did not read all
12 of their IEPs, correct?

13 A. That's correct.

14 Q. Are you providing an opinion as to whether
15 the State of Georgia administers the GNETS program?

16 A. No.

17 Q. What is your understanding about how a
18 local school district superintendent is hired or
19 fired in the State of Georgia?

20 A. None.

21 Q. What is your understanding about how a
22 local educator in a general education setting zoned

1 school is hired or fired in the State of Georgia?

2 A. Say that one again?

3 Q. Sure. What is your understanding about
4 how an educator who works in a zoned school general
5 education setting is hired or fired in the State of
6 Georgia?

7 A. I did not address that in this report.

8 Q. What's your understanding of it? I know
9 you didn't address it. It's just a different
10 question. Do you have an understanding of how that
11 teacher would be hired or fired?

12 A. I have an understanding, in that I
13 understand general educational practices. But
14 specifically in the State of Georgia, no.

15 Q. Okay. Do you have an understanding of how
16 educators who are teaching through the GNETS program
17 are hired or fired in the State of Georgia?

18 A. Yes. The specifics, I cannot recall right
19 now.

20 Q. What did you review to inform your
21 decision or inform your opinion -- or let me start
22 over.

1 What did you review to inform your
2 understanding of how teachers in a GNETS program are
3 hired or fired in the State of Georgia.

4 A. A number of documents that included
5 anything from incident reports, to parent reports, to
6 master schedules, to staffing structures, to IEPs,
7 just student education records, in general, some of
8 which referenced employees, and their time or service
9 within GNETS.

10 Q. Okay. What is your understanding of how
11 educators are hired and fired in the GNETS system in
12 Georgia?

13 A. That -- what I said is all that I know on
14 that, right here, right now. I'd have to review
15 documents and assess that.

16 Q. What is your understanding of the State of
17 Georgia's appropriation process? And by that, I mean
18 the state legislature's appropriation process.

19 A. I don't know.

20 Q. Okay. In compiling your report, did you
21 provide any type of cost analysis as to what your
22 recommendations would cost the State of Georgia?

1 A. Two questions, I think, you asked. Did I
2 do a cost analysis? No. Did I then offer
3 recommendations regarding the cost -- or what I would
4 do -- what I was recommending would cost? Say the
5 second part again?

6 Q. Sure. Well, I think you've answered it,
7 because you did no cost analysis, correct?

8 A. Correct.

9 Q. Okay. And I may have more specific
10 questions later, but I think that's --

11 A. I think the only thing I would add on that
12 is the recommendations that I made are standard for
13 SEA practice across the United States, and in no way
14 require additional resources or funding in order to
15 implement.

16 Q. So it's your testimony that it is standard
17 across SEAs in the United States to implement MTSS?

18 MS. TUCKER: Object to form.

19 THE WITNESS: It is my testimony today
20 that it is common and standard practice in many
21 states, particularly the ones that I've worked with,
22 for implementation of a system of support which may

1 or may not be called MTSS.

2 BY MR. BELINFANTE:

3 Q. Okay. Roughly how many states -- or
4 excuse me. Roughly how many states -- and you can
5 answer in number or percentage -- have not
6 implemented MTSS at the state level?

7 A. I can speak to the states that I've worked
8 with, which is approximately 20. And I can name some
9 of those, if you'd like, that have worked on
10 implementing a system of support.

11 Q. But a system of support, you would agree
12 with me, is pretty different from MTSS, correct?

13 A. No.

14 Q. MTSS -- how many states that you've worked
15 with have implemented all the tiers of MTSS at every
16 school district in their state?

17 A. You're seeking to understand how many
18 states have implemented all levels of MTSS across all
19 schools everywhere in the whole United States.

20 Q. In the states -- you said there's about 20
21 states you've worked with that have implemented MTSS.

22 My question is, of those 20 states, how

1 many have implemented MTSS at every school within
2 those states, all levels of MTSS?

3 A. I couldn't answer that, sitting here
4 today. I would have to review data.

5 Q. Where would I find that data?

6 A. I don't know where you would find it.

7 Q. Okay. Where would you find it?

8 A. A variety of sources.

9 Q. Can you be more specific?

10 A. Yes. For example, implementation of PBIS
11 is an element of MTSS implementation. There are
12 three tools utilized to assess whether or not PBIS is
13 in place. One is SET, Schoolwide Evaluation System.
14 Another, for example, is the tiered intervention
15 framework.

16 Those tools, just by way of example, are
17 kept in a database located at the University of
18 Oregon. And schools opt in to assessing whether or
19 not their level tiers or levels of support are in
20 place. So that's one place in which you could find
21 that data.

22 Another place would be the University of

1 Kansas. There are data -- fidelity data regarding
2 tiered systems of support, both self-assessments for
3 schools to utilize, as well as external fidelity
4 measures, in which the efficacy and fidelity of MTSS
5 or a system of support is implemented effectively.

6 Additionally, also at the University of
7 Kansas, there are classroom assessments that look at
8 the fidelity of implementation of tiered systems
9 within a classroom. Those are located in a different
10 center at the University of Kansas, and can provide
11 support.

12 Also, in Florida, the University of
13 Southern Florida has a tiered fidelity instrument
14 that has been utilized to assess the efficacy of
15 social, emotional learning among many, many, many
16 other places, tools, and resources.

17 Q. But sitting here today, you can't tell me
18 a single state where every school district in that
19 state has implemented MTSS to fidelity; is that
20 correct?

21 A. Without looking at data, I cannot answer
22 that question.

1 Q. You attached your biography or CV to the
2 report somewhere. I would have to find it.

3 A. At the end.

4 Q. I'll just skip to it. Let's see.

5 A. The very end.

6 Q. Let me come back to that. I'll just ask
7 you some questions I have here that references that,
8 but I may have to come back to the CV.

9 Have you ever testified as an expert in
10 court before?

11 A. No.

12 Q. Okay. You were involved in a case
13 involving New York Lawyers for the Public Interest
14 and Paul Weiss; is that correct?

15 A. Yes.

16 Q. Do you recall the name of that case?

17 A. Can I look on the CV?

18 Q. Sure. If you can find it, absolutely. I
19 think I've taken it out of my notebook, which is why
20 it's there. Okay. Yeah, I've taken it out.

21 A. Do I state it on there?

22 Q. I didn't see the name of the case.

1 A. Then I don't recall. If it's not stated
2 on here, I'll spare you the time of me looking for
3 it.

4 Q. Okay. Have you ever served --

5 A. Should I look?

6 Q. Have you ever served as a court monitor?

7 A. No.

8 Q. Okay. On --

9 A. Okay. I see 2018 to 2020, I served as an
10 expert consultant for the New York Lawyers for Public
11 Interest, Paul Weiss. And I do not name the case.

12 Q. Okay.

13 A. And I do not recall what it was called.

14 Q. Okay. The New Orleans K-12 Inclusive
15 Education Charter School, which is right above that
16 Paul Weiss reference.

17 A. Yes.

18 Q. Is that the name of the school or is it a
19 district? Is it an individual school, do you recall?

20 A. This particular example is a -- this
21 particular reference is an individual school.

22 Q. Okay.

1 A. K-12.

2 Q. All right.

3 A. In New Orleans, they're divided by
4 charter, so it's a little different.

5 Q. All right. What states have you
6 personally advised? And by state, I mean State
7 Department of Education, or SEA. I'll use those
8 interchangeably.

9 A. Okay.

10 Q. And if I'm not doing that correctly,
11 please tell me.

12 A. Yeah, you are. You are. So I've worked
13 with Mississippi, New Hampshire, Vermont, Oregon,
14 Maryland, North Carolina, California. Give me a
15 moment, I'm running through in my mind.

16 Q. Sure.

17 A. Did I say Wyoming?

18 Q. No.

19 A. Delaware, Wisconsin, New York, San Diego.
20 Not a state, but -- Oklahoma, Idaho, the State of
21 Washington, Washington, DC, Louisiana, among others.

22 Q. Okay. The recommendations that you make

1 in your report beginning on page 160. And
2 specifically, I'm going to refer to the recommended
3 actions, which begin on 163. Five of them. Have any
4 of the states that you just identified implemented
5 all five recommended actions?

6 A. These actions are in reference to the
7 State of Georgia, and I would have to look at data
8 sources to know whether or not the level or efficacy
9 of how those strategies, and to what degree might
10 have been implemented in other states. But the
11 recommended actions that you're referencing are
12 commonplace in -- at the SEA level.

13 Q. Commonplace in the states you've advised,
14 or commonplace across nation?

15 A. Across the nation.

16 Q. When did MTSS -- well, let's back up a
17 second. Can you -- and you may have -- all right.
18 You define MTSS on page 6 of your report, is that
19 correct? For purposes of the report at least?

20 A. I do define it on page 6 of the report.

21 Q. And what was -- how did you arrive at that
22 definition?

1 A. This definition has been around, in some
2 form or another, over the course of many, many years.
3 A version of this is included in the book that I
4 wrote on the topic. It's also included in several --
5 a version of this is included in several state and
6 federal documents, in which MTSS is reviewed or
7 outlined. And this definition includes some of the
8 core features of MTSS definitions or system of
9 support definitions.

10 Q. Okay. So across the country, educators
11 may have a different or a variety -- varied
12 definition of MTSS; is that correct?

13 A. It's certainly possible that any one
14 educator would have a varied understanding of what
15 MTSS is.

16 Q. When you say that the recommendations that
17 you make -- or the recommended actions that you make,
18 beginning on page 163 of your report, are commonplace
19 across nation, is it your opinion that because it
20 does include MTSS in several of them, that they are
21 applying the definition you provide on page 6, or is
22 it one of the varied definitions that you just

1 identified?

2 MS. TUCKER: Object to form.

3 BY MR. BELINFANTE:

4 Q. Or do you know?

5 A. I do know.

6 Q. Okay.

7 A. What I just said was, is it possible that
8 an educator would have a varied understanding of
9 MTSS? And the answer to that is certainly yes. I
10 can't speak to what educators fully understand about
11 MTSS. But I can speak to what is a large-scale
12 system of support at the state level.

13 Q. But did you not also say that there are
14 versions of this definition that are in federal and
15 state education law or regulations, and there are
16 versions in different states? In other words, if I
17 went to every state in the country, they may define
18 MTSS differently, correct?

19 MS. TUCKER: Object to the form.

20 THE WITNESS: There are core features of
21 MTSS definitions, which is essentially a system,
22 organized system of support, and which we provide

1 educational services through. And that has -- that
2 is common across definitions. For example, using
3 data to make decisions, having effective tiers of
4 support in which students can move in and out of, et
5 cetera, et cetera, et cetera.

6 BY MR. BELINFANTE:

7 Q. But there is not a standard definition
8 applied across the country?

9 A. I don't know what you're referencing in
10 terms of a standard.

11 Q. Are you familiar with the IDEA?

12 A. Yes.

13 Q. Are you familiar with the term free and
14 public education, or FAPE?

15 A. I'm pausing for a minute.

16 Q. Sure.

17 A. Yes.

18 Q. Okay. Is there a standard definition of
19 FAPE applied across the country?

20 A. I don't know.

21 Q. Okay.

22 A. Let me say, I can't recall right now.

1 Q. Okay. Are you familiar with -- given your
2 familiarity with the IDEA, are you familiar with the
3 term IEP team?

4 A. Yes.

5 Q. Do you know who makes up an IEP team?

6 A. I do. I would like to clarify. You said
7 given my familiarity with IDEA.

8 Q. Mm-hmm.

9 A. I don't think you asked me if I was
10 familiar with IDEA.

11 Q. I thought I did.

12 A. Maybe.

13 Q. But are you familiar with -- sure, either
14 way. Are you familiar with the IDEA?

15 A. I am.

16 Q. Okay. Who makes up members of an IEP team
17 formed pursuant to the IDEA?

18 MS. TUCKER: Object to form.

19 BY MR. BELINFANTE:

20 Q. Or what is your understanding of who makes
21 up the members of the IEP team?

22 A. I can speak from practical experience as

1 an educator, what is typical on an IEP, who makes up
2 an IEP team. And it is typically the student with
3 disabilities, a parent of that student with
4 disabilities, an administrator in the building, a
5 principal, if it is a student in, for example, the
6 State of Georgia, that's in special education located
7 in a general education program. If it's a student
8 located in the GNETS program in the State of Georgia,
9 then a GNETS administrator may sit on that IEP team.

10 There is a general educator and special
11 educator. And if the student is receiving any sort
12 of related service provision, those related service
13 providers, such as speech, et cetera, OT/PT makes it
14 on that team as well.

15 Q. Have you ever been a member of an IEP
16 team?

17 A. Yes.

18 Q. Have you ever been a member of an IEP team
19 in the State of Georgia?

20 A. No.

21 Q. To your knowledge, are any members or
22 employees of the State Department of Education in the

1 State of Georgia on an IEP team?

2 A. I don't know.

3 Q. Okay. To your knowledge, are any members
4 of the Department -- or any employees of the
5 Department of Community Health members of a state IEP
6 team -- or members of an IEP team for students in
7 Georgia?

8 A. I don't know.

9 Q. How about the Department of Behavioral
10 Health? To your knowledge, are there any members or
11 employees of the Department of Behavioral Health who
12 serve on IEP teams in Georgia?

13 A. I don't know.

14 Q. Okay. If a parent -- and is it your
15 understanding that an IEP team makes a recommendation
16 for an individual student, and an IEP plan or a plan
17 on how that student should receive educational
18 services?

19 A. Can you restate that? I mean, repeat it.

20 Q. Sure. Let me ask it this way. What is
21 your understanding of what an IEP team does, in terms
22 of making recommendations for students, or plans?

1 A. An IEP team is charged with monitoring
2 current levels of progress of students, understanding
3 student need, providing recommendations for student
4 learning, and offering suggestions regarding
5 adaptations, modifications, or additional related
6 supports that a student might need. An IEP team is
7 only able to offer what is available for students to
8 participate in.

9 Q. If a parent is dissatisfied with an IEP
10 team's recommendation, what is your understanding of
11 any remedies or rights they may have to challenge it?

12 A. I can speak, again, from an educator's
13 perspective on that topic, that the parent, if
14 unsatisfied with an IEP decision, has the opportunity
15 to -- I can't think of the exact word, but they have
16 the ability to express concern over that decision.

17 What I found in the documents, that there
18 were no -- if a parent expressed concern, for
19 example, in this case with the GNETS program, there
20 were not other options available.

21 Q. Are you familiar with what's called a due
22 process hearing?

1 A. Yes.

2 Q. Did you see where any parents who were
3 dissatisfied in the State of Georgia with a
4 recommendation for GNETS services filed a due process
5 hearing or took part in a due process hearing?

6 A. I don't recall, sitting here, if I
7 reviewed documents about that.

8 Q. Okay. Is it your understanding that if a
9 parent were dissatisfied with a recommendation and
10 placement in a GNETS service program, that they
11 could, under the IDEA, challenge that recommendation?

12 A. Again, speaking as an educator, if a
13 parent is dissatisfied with a decision, they could
14 challenge that. The reality of that situation is
15 that if they challenge that, and there is no other
16 alternative, that student goes home with them.

17 Q. Did you read any decisions in the State of
18 Georgia where that was the case, meaning a parent
19 brought a challenge, and the result of that challenge
20 was that the student went home with them?

21 A. Yes.

22 Q. And how many?

1 A. I don't remember.

2 Q. Do you remember the names of any student
3 where that occurred?

4 A. No.

5 Q. And if they -- and when you say went home
6 with them, what do you mean by that?

7 A. That the option -- I referenced this in
8 here, if you'd like me to point to the example.

9 Q. Sure.

10 A. If you'll give me a minute to find it,
11 that way, we can talk specifics.

12 A few more minutes. If I can't find it,
13 then I'll go about it another way.

14 Q. If you can't, what we'll do is when we
15 break for lunch, I'll just see if you can look for it
16 then.

17 A. Okay.

18 Q. And we can come back to it.

19 A. Give me one more minute here.

20 Okay, I'll take you up on your offer to
21 look in a minute.

22 Q. All right.

1 A. Too many pages.

2 Q. Are you generally familiar with the
3 Americans With Disabilities Act?

4 A. Yes.

5 Q. Are you familiar with the term least
6 restrictive environment appropriate, as it is in the
7 Americans With Disabilities Act regulations?

8 MS. TUCKER: Object to form.

9 THE WITNESS: I am familiar with the
10 concept of least restrictive environment, as it
11 applies in the field of education.

12 BY MR. BELINFANTE:

13 Q. Okay.

14 A. Not from a legal perspective.

15 Q. Okay. What factors go into determining
16 what is the least restrictive environment appropriate
17 in the context of education?

18 MS. TUCKER: Object to form.

19 THE WITNESS: Are you asking what -- what
20 are you asking?

21 BY MR. BELINFANTE:

22 Q. Let me back up a second.

1 Do you know if an IEP team is supposed to
2 look at what is the least restrictive environment
3 appropriate for the needs of that student?

4 A. The IEP team should consider the
5 environment in which a student is learning, yes.

6 Q. What factors go into determining what is
7 the least restrictive environment appropriate for the
8 needs of a student, do you know?

9 MS. TUCKER: Object to form.

10 BY MR. BELINFANTE:

11 Q. Or have an opinion on it?

12 A. Factors as it relates to this case that go
13 into making a decision regarding the least
14 restrictive environment are related to what are the
15 available supports and services to meet students'
16 needs who have behavior-related disabilities.

17 Q. And that is determined by the IEP team,
18 correct?

19 A. The supports and services that are
20 available are determined by the entirety of the
21 educational system, starting with the vision,
22 guidance, and leadership at the State Department of

1 Education, then shared with local education agencies,
2 in terms of, again, that system of support that is in
3 place. That is then utilized by an IEP team about
4 what supports can be put into place because of their
5 availability.

6 So, for example, if an IEP team thought
7 that a student would be successful if they had staff
8 from the GNETS program coming into one of their
9 classrooms, as indicated in the GNETS rule, but that
10 is not an option because the only option in the
11 region is a center-based location, then that IEP team
12 is sort of put in a position to make the
13 recommendation of the center-based location, because
14 that's all that's available.

15 Does that make sense?

16 Q. Mm-hmm.

17 A. Okay.

18 Q. When the IEP team is looking at that,
19 though, it's based on the needs of an individual
20 student, correct?

21 A. When an IEP is happening, is it based on
22 an individual student?

1 Q. Correct.

2 A. Yes.

3 Q. Okay. And if an IEP team makes a
4 recommendation, and the student does not receive the
5 services in that recommendation, do you have an
6 understanding of what that would mean under the IDEA?

7 MS. TUCKER: Object to form.

8 THE WITNESS: I'm not sure what you're
9 asking.

10 BY MR. BELINFANTE:

11 Q. So let's say an IEP team recommended that
12 the student receive services through GNETS,
13 hypothetically.

14 A. Okay.

15 Q. And the local school district said, no,
16 and rejected the conclusion of the IEP team. Do you
17 know if there would be any consequences to the local
18 school district for that?

19 A. That's a hypothetical, and I'm just not
20 sure where to go with that.

21 Q. Do you have any understanding of whether
22 the State of Georgia Department of Education has the

1 authority to override an IEP team recommendation?

2 A. I did not look at or evaluate that.

3 Q. Understood. But do you have an
4 understanding of whether the State of Georgia has the
5 authority -- or the State of Georgia Department of
6 Education has the authority to override an IEP team
7 recommendation?

8 A. I don't know.

9 Q. Do you have an understanding of whether
10 the State of Georgia's Department of Community Health
11 has the authority to override an IEP team
12 recommendation?

13 A. That was -- no.

14 Q. And sorry, you're going to find these --
15 there's a series of questions that get repetitive.

16 A. No, no, no -- yeah, yeah, yeah.

17 Q. Do you have an understanding of whether
18 the State of Georgia Department of Behavioral Health
19 and Developmental Disabilities has the authority to
20 override an IEP team recommendation?

21 A. No.

22 MS. TUCKER: Object to form.

1 BY MR. BELINFANTE:

2 Q. Are you familiar with the term unnecessary
3 segregation as it relates to claims under the ADA?

4 MS. TUCKER: Object to form.

5 THE WITNESS: I think at the beginning of
6 this, you said you asked questions that were friendly
7 or -- not friendly. What did you say?

8 BY MR. BELINFANTE:

9 Q. I'm not trying to confuse you.

10 A. What was the -- what are you asking?

11 Q. I'm asking if you are familiar with the
12 phrase unnecessary segregation as it relates to the
13 Americans With Disabilities Act?

14 A. I'm familiar with the phrase of
15 unnecessary segregation, because I used it throughout
16 my report.

17 Q. Okay. What constitutes unnecessary
18 segregation?

19 A. When a child is moved away from his or her
20 school-aged peers or siblings, set apart from, or
21 treated differently than students without
22 disabilities.

1 Q. And that would be the case, even if an IEP
2 team recommended that a child be separated from their
3 peers in general educating settings, correct?

4 A. What would be the case?

5 Q. That that would be unnecessary
6 segregation, based on your definition?

7 A. So you're asking if an IEP team made a
8 recommendation for unnecessary segregation?

9 Q. No, I'm sorry. If an IEP team makes a
10 recommendation that a student in a general -- that is
11 currently, let's say, in a general education
12 environment zoned school, receives services in a
13 separate GNETS facility, is it your opinion that that
14 IEP team has caused unnecessary segregation?

15 A. As indicated in my report, I believe that
16 the system must be -- offer a full array of support
17 and services for students with disabilities, such
18 that unnecessary segregation isn't the only
19 alternative that an IEP team has when making a
20 decision about a student.

21 So if the state were providing guidance,
22 vision, professional learning per my recommendations,

1 then there would be a broader array of supports and
2 services that would eliminate the need for
3 unnecessary segregation.

4 Q. But sitting here today, and understanding
5 your criticisms of the State of Georgia, every time
6 an IEP team recommends that someone receive GNETS
7 services, is that -- and causes them to, then, leave
8 their zoned school, is that segregation unnecessary
9 as you define it?

10 MS. TUCKER: Object to form.

11 THE WITNESS: Yeah, there were three parts
12 to that. So given my criticism, you said --

13 BY MR. BELINFANTE:

14 Q. I mean, I understand your criticisms of
15 the State of Georgia. But sitting here and the
16 status quo today, can you say that every time an IEP
17 team recommends a student go to a freestanding GNETS
18 location, that that was unnecessary segregation?

19 MS. TUCKER: The same objection.

20 THE WITNESS: I don't want to accept the
21 premise of criticism of the State of Georgia or
22 whatever. I don't use the word criticism, whatever.

1 So not that, but the second part you're asking is
2 what?

3 BY MR. BELINFANTE:

4 Q. What I'm -- all right. Then forget the
5 criticism part. Is it your opinion that every time
6 an IEP team in the State of Georgia recommends that a
7 student go to a GNETS facility that is separate and
8 freestanding, that that constitutes unnecessary
9 segregation?

10 A. If you were to say that any -- if an IEP
11 team recommends a segregated setting, based on the
12 individual needs, would I consider that to be
13 unnecessary? No. The concern here is that you said
14 within the GNETS program. And the GNETS program, as
15 indicated in finding 3, is failing to provide the
16 services that it's using to justify its existence.

17 So, for example, they aren't providing
18 opportunities for equal learning, they aren't
19 providing opportunities for learning with peers, et
20 cetera.

21 Q. Is it your opinion that the GNETS, as you
22 just described it, is not providing a free and public

1 education to the students in that program?

2 MS. TUCKER: Object to form.

3 THE WITNESS: I'm not -- I did not look at
4 the application of FAPE in the context of the GNETS
5 program. What I can tell you is the GNETS centers
6 and school-based sites are not even considered
7 schools. They're considered entities.

8 And so when asking whether or not students
9 within the GNETS program are having an effective
10 education, or whether or not they're unnecessarily
11 segregated, it's very difficult to say that they are
12 not.

13 BY MR. BELINFANTE:

14 Q. What is the basis of -- you said they're
15 not considered schools. Can you explain that?

16 A. Yes, that's also in here.

17 Q. Okay. Why don't we look for that at
18 lunch, too.

19 A. Okay. They're considered entities.

20 Q. If a school fails to deliver effective
21 behavioral and therapeutic supports, does that school
22 also fail to provide a free and public education?

1 MS. TUCKER: Object to form.

2 THE WITNESS: Can you say that again?

3 BY MR. BELINFANTE:

4 Q. Sure. If a school fails to deliver
5 effective behavioral and therapeutic supports, would
6 that school also deprive students of a free and
7 public education?

8 MS. TUCKER: The same objection.

9 THE WITNESS: I -- I don't understand the
10 question.

11 BY MR. BELINFANTE:

12 Q. You're familiar with the phrase free and
13 public education?

14 A. Free and appropriate public.

15 Q. Appropriate, thank you.

16 A. Yes, I am.

17 Q. This is why you said FAPE, and I should
18 have just stuck to FAPE.

19 A. It's easier.

20 Q. If a school -- is providing effective
21 behavioral and therapeutic supports a necessary
22 element of providing a FAPE?

1 A. I can't speak to whether or not what I've
2 talked about in the report relates to FAPE.

3 Q. I'm not asking you about the report. I'm
4 asking you about your opinion, generally. Is your
5 opinion generally that if a school district fails to
6 provide effective behavior and therapeutic supports,
7 it cannot deliver a FAPE?

8 MS. TUCKER: Object to form.

9 THE WITNESS: I am just not sure how to
10 answer that right now, sitting here.

11 BY MR. BELINFANTE:

12 Q. Do you find that providing effective
13 behavior and therapeutic supports is a necessary
14 element of a FAPE?

15 MS. TUCKER: The same objection.

16 THE WITNESS: If you were saying school,
17 schooling experience, or something of that nature, I
18 can probably go where you're going. But I don't know
19 when you're asking what constitutes a free and
20 appropriate public education, as it relates to what I
21 reviewed within this case? I don't -- I can't.

22 BY MR. BELINFANTE:

1 Q. Yeah, and I think that's where we're
2 disconnecting. I'm not asking about the report.

3 A. Okay.

4 Q. I'm asking -- yeah, in your professional
5 opinion, if a school is not providing effective
6 behavior and therapeutic supports, could it provide a
7 free and appropriate public education?

8 MS. TUCKER: Object to form.

9 THE WITNESS: Free and appropriate public
10 education. I'm thinking.

11 BY MR. BELINFANTE:

12 Q. Sure.

13 A. Can we come back to that?

14 Q. Could you provide me an answer now, and
15 then we can come back to it, and you can correct the
16 answer later?

17 A. Sure.

18 Q. And I'm sorry that I have to do that.
19 That's just kind of standard.

20 A. No problem, no problem.

21 Q. Yeah.

22 A. Again, in the context of being an

1 educator, the provision of a free and appropriate
2 public education is ever-changing, given what is --
3 in terms of how you would define a schooling
4 experience for a child.

5 And so children are allowed to have a free
6 and appropriate public education. Children are
7 allowed to have -- should be allowed to have access
8 to schooling, should be allowed to have opportunities
9 to learn, regardless of whether or not they have
10 disabilities. They should be able to engage in
11 schooling environments and experiences in which their
12 behavior-related disability does not result in
13 exclusion from those experiences.

14 So that's what I would say about that.

15 Q. And in order to achieve what you just
16 described, is it your professional opinion that that
17 student would need effective behavior and therapeutic
18 supports in the school system, or delivered to them
19 in their school?

20 A. It depends on the student.

21 Q. If a school district -- and again, I
22 realize this is hypothetical, and I'm asking in your

1 professional opinion, unrelated -- you know, not
2 what's in the report.

3 A. Unrelated to --

4 Q. Right.

5 A. Right.

6 Q. Not what's in the report. In your
7 professional opinion, if a school district offered no
8 behavior and therapeutic supports, no PBIS, no MTSS,
9 no school counselor, no wraparound services,
10 literally nothing, like just reading, writing,
11 arithmetic, period, would that school district be
12 providing a free and appropriate public education, or
13 FAPE, to all of its students?

14 MS. TUCKER: Object to form.

15 THE WITNESS: The context of that question
16 is so broad, I can't even hypothetically go there.
17 There's so many elements to education that I just --
18 I'm sorry.

19 BY MR. BELINFANTE:

20 Q. Totally fair. Let me ask this. In order
21 to examine whether a school district is providing a
22 fair and appropriate -- or free and appropriate -- a

1 FAPE public education, does one necessarily have to
2 look at the behavioral health and therapeutic
3 services that are provided?

4 MS. TUCKER: Object to form.

5 THE WITNESS: I don't know.

6 BY MR. BELINFANTE:

7 Q. In order to prevent unnecessary
8 segregation, is it your professional opinion that one
9 has to look at the services, behavioral health -- or
10 excuse me, behavioral and therapeutic services
11 provided in a school?

12 A. Repeat that, please?

13 Q. Sure. If one is to consider whether a
14 student is undergoing unnecessary segregation, does
15 the question turn on the types of services offered
16 within the school -- unnecessary segregation based on
17 their -- I want to use the phrase you used --
18 behavioral disability, is that correct?

19 A. Emotional.

20 Q. Emotional and behavioral health
21 disability.

22 A. Thank you.

1 Q. If a student with emotional and behavioral
2 health disability, in order to determine whether a
3 student with emotional and behavioral health
4 disability is being unnecessarily segregated, do you
5 have to consider the services provided in the school?

6 A. Yes.

7 Q. Okay. In order to determine if that same
8 student is receiving a FAPE, do you have to look at
9 the services provided in the school?

10 MS. TUCKER: Object to form.

11 THE WITNESS: I don't know. I think if
12 you want me to look at FAPE and apply FAPE to -- in
13 my opinion, and as it relates to the work I'm doing
14 here, then I need to see that and look at it. I
15 just -- I don't know what else to--

16 BY MR. BELINFANTE:

17 Q. Because it's individualized, or is it --
18 like, why would you need to -- what would you need to
19 look at to determine if services are a factor you
20 would consider in determining what constitutes a
21 FAPE?

22 A. Because I need to know specifically what

1 that definition is, and what it is that you're
2 referencing when you talk about FAPE, and how that
3 relates as an educator in the field, and what that
4 looks like.

5 Q. Are you familiar with the definition of
6 FAPE in the IDEA?

7 A. Familiar.

8 Q. If we applied that definition, does the
9 question of whether a student is receiving a FAPE
10 turn on what services are being provided in that
11 school district?

12 MS. TUCKER: Object to form.

13 THE WITNESS: You keep asking the same
14 question.

15 BY MR. BELINFANTE:

16 Q. Well, you said before you didn't know
17 where I was going with FAPE, so I'm now saying, let's
18 apply the IDEA's definition of FAPE.

19 A. Do you have a copy of that here that I
20 could look at?

21 Q. I can get it.

22 A. Okay. That would help.

1 Q. We'll both have homework at lunch. We'll
2 come back to that, then.

3 A. Okay.

4 Q. All right. In your work across the
5 country, do other states have services similar to
6 GNETS, where some students are provided education in
7 separate facilities based on their emotional and
8 behavioral disability?

9 A. I'm just breathing for a minute, taking an
10 in-seat break. I don't know if that's a thing, but
11 we're making it a thing.

12 MS. TUCKER: Josh, I don't know if it's a
13 good time for you to take a break at some point soon.
14 It's almost 11:00. If we want to -- I know you have
15 a question pending, but just to order lunch.

16 MR. BELINFANTE: Yeah, let me do this and
17 then I've got, like, one other thing, and we can
18 order lunch after that.

19 THE WITNESS: Okay. Would you ask again?

20 MR. BELINFANTE: Sure.

21 BY MR. BELINFANTE:

22 Q. In your work with other states, have you

1 seen programs in education where students with
2 emotional, behavioral disabilities receive education
3 services in separate facilities?

4 A. Like the GNETS program?

5 Q. Just separate facilities.

6 A. Separate facilities. In my work in other
7 states related to education, the system of education,
8 I've not seen other systems of segregation at the
9 scale and magnitude of what I've seen in the State of
10 Georgia.

11 Q. Okay. You added the scale and magnitude
12 piece. I'm literally just asking about, have you
13 seen other states use separate facilities from a
14 zoned school to provide education services to
15 students with emotional and behavior disabilities?

16 A. I've been in a lot of schools, and so I'm
17 going through the thinking on that.

18 I don't recall any specific place in which
19 I went that was a wholly segregated environment,
20 separate from the schooling experience, in other
21 states.

22 Q. Are you familiar with the May Institute in

1 Massachusetts?

2 A. Yes.

3 Q. Are you aware that they run schools for
4 students with autism?

5 A. Yes.

6 Q. And that they are separate facilities?

7 A. Separate from what?

8 Q. Separate from a zoned school, they're
9 independent freestanding facilities?

10 A. I don't know.

11 Q. If the May Institute or anyone else were
12 operating freestanding facilities just for students
13 with autism or traumatic brain injuries, would that,
14 in every case, constitute unnecessary segregation?

15 A. No.

16 Q. This was that last train of questions, so
17 we can break for lunch -- or order lunch.

18 Are you familiar with the phrase
19 reasonable accommodation as it relates to the ADA?

20 MS. TUCKER: Object to form.

21 THE WITNESS: If you're asking me to
22 define what reasonable accommodation is, no.

1 BY MR. BELINFANTE:

2 Q. Not yet.

3 A. No.

4 Q. Okay. Is it your opinion that the
5 recommendations you make in your report, beginning on
6 page 160, are reasonable accommodations or are
7 reasonable -- let me ask that, and I'll ask the next
8 one.

9 A. Sure.

10 Q. Is it your opinion that the
11 recommendations you make beginning on page 160 to 167
12 of your report constitute reasonable accommodations
13 for students with emotional/behavior disabilities?

14 A. Yes.

15 MS. TUCKER: Object to form.

16 BY MR. BELINFANTE:

17 Q. What goes into what constitutes the
18 reasonableness of reasonable accommodation? What
19 factors do you consider?

20 MS. TUCKER: Object to form.

21 THE WITNESS: Again, you're -- it feels
22 like you're applying legal terminology, and asking me

1 to apply that in this situation and --

2 BY MR. BELINFANTE:

3 Q. If I may interrupt, only because I want to
4 -- I'm not doing that. I believe you just told me
5 that you believe that the recommendations you provide
6 are reasonable.

7 A. Yes.

8 Q. And my question is, in your opinion --

9 A. Okay.

10 Q. -- to make that conclusion, what factors
11 go into the conclusion that it's reasonable?

12 A. Gotcha.

13 Q. I'm not asking you to opine on the law.

14 A. Okay. Thank you.

15 Q. Yes. What factors go into your conclusion
16 that the recommendations are reasonable?

17 A. It is -- the recommendations are
18 reasonable based on my extensive experience in
19 implementing statewide initiatives in and with the
20 support of the state education agencies across the
21 U.S.

22 I'm very knowledgeable about what it takes

1 to change an educational system. And my life's work
2 has been committed to doing just that, and supporting
3 educational systems. Therefore, from my personal
4 experience, I feel very clear on the reasonableness
5 of the asks in the recommendations I've made in the
6 report.

7 Q. Does cost -- is cost a factor in
8 determining whether the recommendations are
9 reasonable?

10 A. In a general sense? Yes.

11 Q. Is workforce availability a factor?

12 A. Always.

13 Q. Did you conduct a workforce study for the
14 State of Georgia?

15 A. I did not conduct a workforce study,
16 although I certainly did look at the number of
17 educators that were available in the GNETS program
18 and their certification, et cetera.

19 Q. Did you conduct a study of how many
20 physical therapists there are in the State of
21 Georgia, and where?

22 A. I did not conduct a study, but I did

1 review documents that shared that information.

2 Q. How about speech therapy?

3 A. The same.

4 Q. What documents did you look at, do you
5 recall?

6 A. Yes.

7 Q. Are they listed on Appendix E?

8 A. Yes.

9 Q. Did you look at -- did they include the
10 number of psychologists in the State of Georgia?

11 A. Yes.

12 Q. Psychiatrists as well?

13 A. Yes.

14 Q. And social workers?

15 A. Yes.

16 Q. And your conclusion is that there is a
17 sufficient number of those professionals scattered
18 across the state to provide -- to implement your
19 recommendations in every school district in Georgia?

20 A. Multiple parts to that question. Is there
21 a sufficient number? There's not a sufficient number
22 of support service personnel certified in the State

1 of Georgia, or in any state, for that matter. That's
2 a challenge in education right now, what -- so that's
3 part one.

4 Part two was whether or not -- can you say
5 part two again?

6 Q. I think you answered my question. I don't
7 think it was two parts. I think it was, was there
8 enough to implement in every school district across
9 the State of Georgia. And I think you answered my
10 question.

11 A. I did not.

12 Q. You did not answer it?

13 A. No.

14 Q. So then go ahead.

15 A. I think you were asking, is there enough
16 to implement the recommendations in my report as they
17 are now.

18 Q. In every school district in Georgia,
19 correct.

20 A. The recommendations in the report are
21 similar to recommendations made in other states, and
22 have effectively been implemented with the same --

1 I'll say with similar educational staffing shortages.

2 Q. Which states?

3 A. Elements of the recommendation in various
4 forms in all states throughout the U.S., but in
5 particular, those I mentioned earlier.

6 Q. Which -- the ones you've worked with?

7 A. The 20 plus states.

8 Q. 20 or so?

9 A. Yes.

10 Q. So it's your contention that the State of
11 Mississippi has fully implemented MTSS in every
12 school district in the state?

13 MS. TUCKER: Object to form.

14 THE WITNESS: Not what I said.

15 BY MR. BELINFANTE:

16 Q. Well, then what did you say?

17 A. I said that various states -- many states
18 across the U.S. implemented elements of my
19 recommendations with current staffing shortages that
20 are part of the educational system.

21 Q. Are you aware of any state that has
22 implemented all of your recommendations in every

1 school district in those states?

2 A. You asked that earlier. I can't remember
3 what I said earlier.

4 Q. Well, I'm trying to determine, because
5 you're asking the court to mandate at least five
6 recommended actions to flow through to every school
7 district in the State of Georgia. I'm asking to
8 determine if any state, to your knowledge, has ever
9 done that.

10 MS. TUCKER: Object to form.

11 THE WITNESS: I'm not asking that. What
12 I'm asking is that the state establish a vision,
13 guidance, and support along a full continuum of
14 services for students with behavior-related
15 disabilities in the State of Georgia.

16 That is to include things such as
17 effective social and emotional behavior supports,
18 effective teaching and learning processes, effective
19 school climate, effective resources and support,
20 entitled students with disabilities such as students
21 without disabilities receive.

22 BY MR. BELINFANTE:

1 Q. And those recommendations are reflected in
2 your report beginning on page 160 and ending on page
3 167?

4 A. That is correct.

5 Q. And again -- okay, I'll leave it at that.

6 MR. BELINFANTE: You want to break for
7 determining lunch? Is that what we're doing?

8 MS. TUCKER: I think so. And just a
9 break, in general, because we've been going for,
10 like, an hour. Is it an okay time for you?

11 MR. BELINFANTE: Yeah, totally fine.

12 THE VIDEOGRAPHER: Off the record at
13 11:06.

14 (Recess.)

15 THE VIDEOGRAPHER: On the record at 11:30.

16 BY MR. BELINFANTE:

17 Q. Dr. McCart, I'm going to -- you've
18 recently written a book called -- with others, called
19 Build Equity, Join Justice: A Paradigm for Social
20 Belonging; is that right?

21 A. Yes, I've written a book. That's not
22 quite the title, but, yes.

1 Q. And that was with -- is it Dr. Sailor and
2 also -- is it Dr. Kelly?

3 A. Wade Kelly.

4 Q. All right. I'm going to show you what
5 we'll mark as --

6 (Discussion held.)

7 MR. BELINFANTE: I'll show you what we'll
8 mark as Exhibit 3.

9 (McCart Exhibit No. 3 was identified
10 for the record.)

11 MR. BELINFANTE: I've got extras if you
12 all want.

13 BY MR. BELINFANTE:

14 Q. This is an article from today.ku.edu.
15 Have you seen this before?

16 A. Let me see. Yes. Yes.

17 Q. Okay. If you turn to the second page --
18 well, let me ask this first. The recommendations
19 that you make in this report and the recommended
20 actions, are they consistent with the recommendations
21 in the book Build Equity, Join Justice?

22 A. No.

1 Q. What's the difference?

2 A. The -- a multitude of differences.

3 Q. Are you recommending in your report an
4 equity-based MTSS approach in Georgia?

5 A. I'm recommending a system of support that
6 provides vision, guidance, and leadership from the
7 state to LEAs, to schools, to support students with
8 disabilities. That system of support can be called
9 MTSS, but can be called other things.

10 Q. Is the MTSS that you're recommending
11 specifically on page 164, which uses the phrase
12 "within MTSS," an equity-based MTSS?

13 A. Where are you?

14 Q. We can start on page 163, "Recommended
15 action: Develop state capacity to provide guidance
16 for implementation of MTSS through direction, policy,
17 and technical assistance for districts and schools
18 throughout the state."

19 A. Yes.

20 Q. Page 164, "Recommended action: Develop
21 state capacity to serve as technical support for
22 district implementation of social, emotional,

1 behavioral, and mental practices within MTSS."

2 A. Mental health practices within MTSS, yes.

3 Q. Page 165, "Recommended action: Develop
4 state capacity to serve as technical support for
5 district scaling of evidence-based implementation
6 actions to support equity-based MTSS embedded within
7 social, emotional, behavioral, and mental health."

8 Do you see that?

9 A. I do.

10 Q. Page 165 again, "Recommended action:
11 Develop state capacity to serve as technical support
12 for district implementation of evidence-based
13 practices to support equity-based MTSS within
14 embedded social, emotional, behavioral, and mental
15 health."

16 Do you see that?

17 A. I do. You skipped one.

18 Q. I did because it didn't use the phrase
19 MTSS.

20 A. Gotcha.

21 Q. So on page 2 of 4 of this article, when it
22 describes, at the last paragraph, "The book outlines

1 strategies for ensuring that implementation of
2 equity-based MTSS in schools is done with equity as
3 the driving force for the measure of success."

4 Is that an accurate statement of what your
5 book, Build Equity, Join Justice, outlines?

6 MS. TUCKER: I just want to correct. It
7 says, "and the measure of success."

8 MR. BELINFANTE: Sorry.

9 THE WITNESS: This book outlines
10 strategies for ensuring that implementation of
11 equity-based MTSS is done in schools -- I'm sorry,
12 MTSS in schools is done with equity as the driving
13 force and the measure of success.

14 BY MR. BELINFANTE:

15 Q. And you're recommending equity-based MTSS
16 for the State of Georgia, correct?

17 A. Yes.

18 Q. And so looking at your quote in the first
19 full paragraph of the article, it says, "The book
20 hopes to inspire a deeper thinking and a fundamental
21 redesign in the way we, as educators, understand and
22 support students and structure our schools."

1 Do you see that?

2 A. No.

3 Q. Sorry, first full paragraph beginning with
4 the quote, "The book hopes," on page 2, the same
5 page.

6 A. I need one more -- say that again. Okay,
7 "The book hopes."

8 Q. Yeah.

9 A. I'm with you.

10 Q. Is that an accurate quote of yours?
11 That's my only question.

12 A. That is an accurate quote of mine, "The
13 book hopes to inspire a deeper thinking and
14 fundamental redesign in the way we, as educators,
15 understand and support students and the structure of
16 our schools."

17 Q. Now, we were talking earlier, and you said
18 that the recommendations you have in your report in
19 this case, beginning, again, on page 163, in terms of
20 the recommended actions, are commonplace across the
21 country.

22 This article says, on page 2, starting in

1 that last paragraph, it says -- the part we've
2 already talked about, "The book outlines strategies
3 for ensuring that implementation of equity-based MTSS
4 in schools is done with equity as the driving force
5 and measure of success?"

6 It then goes on to say, "This is, in part,
7 a response to the prevalence of an educational
8 systems that routinely segregate based on placing
9 into separate classrooms or schools, those students
10 who learn or behave differently from the dominant
11 culture."

12 Do you see that?

13 A. Yes, I see that.

14 Q. I realize those aren't your words, but do
15 you agree with that second sentence?

16 A. I've forgotten the start and end of your
17 question. So is the question now -- just so I
18 understand, are you asking me, do I agree with the
19 sentence that starts at the bottom of page 2 and goes
20 on to page 3?

21 Q. Yes.

22 A. So you're -- this is, in part, a response

1 to the prevalence of educational systems that -- that
2 sentence?

3 Q. Yes.

4 A. Do I agree with that statement?

5 Q. Yes.

6 A. In part, yes. The book was in response to
7 a system that -- yes.

8 Q. So you believe there is a prevalence of
9 educational systems in the United States that
10 routinely segregate by placing into separate
11 classrooms or schools, those students who learn or
12 behave differently from the dominant culture?

13 A. No.

14 Q. So then what do you agree with in that
15 second sentence?

16 A. I thought you were asking -- this is, in
17 part -- the production of this book, the writing of
18 this book --

19 Q. Right.

20 A. -- was in response to, in part, systems
21 that segregate.

22 Q. Right. My question really is about the

1 prevalence of educational systems. Do you believe
2 that there is a prevalence of educational systems
3 that routinely segregate?

4 A. Over the years?

5 Q. I'm just -- from what this says. If the
6 book is in response to that, it presumably -- well,
7 let me ask this. Is the book to address -- it's to
8 help schools implement equity-based MTSS now,
9 correct?

10 A. You're saying -- you're asking me now, is
11 Build Equity, Join Justice about helping schools
12 build equity-based MTSS?

13 Q. Today, yes.

14 A. Today? That is one very small part of
15 this book.

16 Q. Okay.

17 A. My other book is all about it.

18 Q. Okay. In page 3, second full paragraph,
19 the sentence begins, "In the book, the authors argue
20 that a paradigm shift is needed to address the
21 inequities embedded in many aspects of the
22 educational system."

1 Do you see that?

2 A. Yes.

3 Q. Do you agree with that description of the
4 book?

5 A. I do agree with that description of the
6 book. I'll just add that the book has nothing to do
7 with my recommendations that I've made in the report
8 to the State of Georgia.

9 Q. Your recommendations use the phrase
10 equity-based MTSS.

11 A. That's correct.

12 Q. Your book is based on the equity-based
13 MTSS, correct?

14 A. This book is based on building equity and
15 joining justice around a 10-point paradigm that is
16 separate and distinct from equity-based MTSS, of
17 which a component is included, but is not the primary
18 purpose or intention of the book.

19 So was the word equity-based MTSS used in
20 Build Equity, Join Justice? Yes. Was this book
21 utilized as a tool for writing the report? No.

22 Q. So equity-based MTSS means one thing for

1 the book, and another thing for your report; is that
2 right?

3 A. No.

4 MS. TUCKER: Object to form.

5 THE WITNESS: I don't -- no.

6 BY MR. BELINFANTE:

7 Q. They mean the same thing in your book and
8 in the report?

9 MS. TUCKER: Object to form.

10 BY MR. BELINFANTE:

11 Q. It's a yes or no. Do they mean the same
12 thing or not?

13 MS. TUCKER: Same objection.

14 THE WITNESS: Can you ask the question
15 again?

16 BY MR. BELINFANTE:

17 Q. Does equity-based MTSS mean the same thing
18 in your book that we just talked about as it does in
19 your report on the pages we discussed?

20 A. Not to be difficult, but there are -- MTSS
21 is considered a continuum of support. And there are
22 gradations along a wide spectrum of educational

1 practice of what equity-based MTSS is and looks like.

2 And so are these the same words? Yes.

3 Just like I could say teaching in the book and I
4 could say teaching in the report. And teaching can
5 look and feel very different, because there is a
6 continuum of what those practices look like in
7 reality in the field.

8 Q. Sure. So equity-based MTSS could look
9 different in Mississippi, New Hampshire, Vermont,
10 Oregon, Maryland, for example, than it does in
11 Georgia; is that right?

12 A. Yes.

13 Q. And would MTSS look different as it would
14 -- in states like that, as it would in Georgia?

15 A. I didn't understand what you said.

16 Q. I was asking about equity-based MTSS in
17 the immediate prior question. So my follow-up
18 question is, does MTSS look different in Mississippi,
19 New Hampshire, Vermont, Oregon, Maryland, for
20 example, than it would in Georgia?

21 A. I would hope so.

22 Q. And how does one determine fidelity to

1 MTSS if it varies by state?

2 A. There's a number of mechanisms for
3 measuring fidelity of implementation of MTSS. Some
4 of the tools that I mentioned earlier today help
5 measure, among many other tools.

6 Q. If a court were to say that Georgia is to
7 implement MTSS, what standards would Georgia look to,
8 to determine fidelity?

9 MS. TUCKER: Object to form.

10 BY MR. BELINFANTE:

11 Q. Let me withdraw that question and ask
12 another one. That's probably fair.

13 In terms of your recommended actions, as
14 they relate to Georgia in implementing MTSS, what
15 fidelity standards are you recommending that Georgia
16 adopt to determine if it is complying with your
17 recommended actions?

18 A. I would have to reference my report.
19 Specifically, I don't believe I mentioned a specific
20 fidelity measure. Rather, I made a recommendation
21 that the state consider an effective system of
22 support for meeting the needs of students with

1 disabilities who have -- who experience behaviors
2 associated with those disabilities.

3 Certainly if the opportunity -- if there
4 was the desire of the state to implement a fidelity
5 measure, certainly one could be provided.

6 Q. Where would -- do you agree that in order
7 to implement MTSS effectively, the state has to
8 believe in MTSS?

9 A. The state needs -- the state needs to
10 believe that having an educational system of support
11 is important for supporting student need, yes.

12 Q. Do you have any understanding of what the
13 State Department of Education is doing with regards
14 to MTSS?

15 A. I did not evaluate the efficacy of MTSS or
16 fidelity within the State of Georgia. Is that what
17 you're asking?

18 Q. I think you just answered what was
19 probably my third in line.

20 A. Oh.

21 Q. So you've done well. You've saved us
22 time.

1 A. I always like that.

2 Q. Now for the part that nobody likes. You
3 said that we need an effective system of support to
4 meet needs. How does one determine effective?

5 A. Efficacy of outcomes as it relates to the
6 students in the GNETS program, as well as other
7 students, are whether or not students have access to
8 educational opportunities as students without
9 disabilities.

10 And they have the opportunity to
11 experience the traditional schooling experience,
12 where effective and appropriate supports are
13 provided, resulting in outcomes for students that are
14 academically, socially, behaviorally sound. Happy,
15 happy kids.

16 Q. So the efficacy of educational services
17 turn, at least in part, on the happiness of the
18 child?

19 A. Certainly you would hope that a child
20 would be happy.

21 Q. Well, you would certainly hope they are.
22 But if they're not, is that a fault of the school

1 system and the services provided in that school?

2 A. That's not what I said.

3 Q. Okay.

4 A. What I said is that what determines
5 student success is academic, behavioral, social,
6 emotional, and mental health outcomes that are
7 positive for students.

8 Q. So in order to determine if Georgia is
9 providing appropriate supports, we look at outcomes.
10 Is that what you're stating?

11 A. Look at many things. I'm sorry, I
12 interrupted you.

13 Q. No, but outcomes is one of the things you
14 look at?

15 A. That is one of the things.

16 Q. What other than outcomes?

17 A. The data early in the report shares some
18 of that, but time in general education, and in
19 effective instruction.

20 Q. I'm listening.

21 A. Yeah, I'm looking. Amount and time of
22 involvement and inclusion with general education with

1 peers, amount of time focused on high expectations
2 and access to quality, or at least appropriate
3 environments, such as cafeterias, gymnasiums,
4 after-school activities, specials, all of the, again,
5 traditional elements of a schooling experience.

6 Q. Is spending 40 percent of the time in a
7 general education environment, is that deemed
8 indicative of effective supports?

9 A. That depends, absolutely, on each child.

10 Q. Okay.

11 A. And their needs.

12 Q. So in order to determine the efficacy of
13 services, it's an individualized consideration as
14 well?

15 MS. TUCKER: Object to form.

16 THE WITNESS: No.

17 BY MR. BELINFANTE:

18 Q. So is 40 percent good or not? At one
19 level, it's not. At one level, it is. I'm trying to
20 determine when is it an individualized consideration
21 and when is it a generalized consideration?

22 A. I'm not sure I understand what your

1 question is now.

2 Q. If a child is spending, on average, 40
3 percent of their time in general education settings,
4 is that indicative of effective services or is it
5 indicative of not effective services?

6 A. I don't know that child, so it's
7 impossible for me to say.

8 Q. So you have to look at the individual
9 student?

10 A. To what?

11 Q. To determine the efficacy of services.

12 A. It's more than that.

13 Q. Okay.

14 A. That's one variable.

15 Q. So the time spent in general education is
16 an individual variable. What are general variables?

17 A. That's not what I said. I'm sorry.

18 Q. Then please clarify what you said.

19 A. The variables to indicate the
20 effectiveness, is that what you're asking?

21 Q. Well, I'm specifically asking about the
22 time spent in general education. I think you had

1 identified that as one of the things you look at when
2 considering efficacy.

3 So my question is, if a child is spending
4 40 percent of their time in general education, is
5 that indicative of an effective program or an
6 ineffective program?

7 A. That is not -- there's not a correlation
8 between that.

9 Q. Okay.

10 A. Because there are a number of variables
11 that determine whether or not an educational
12 placement is effective.

13 Q. And those variables are individualized in
14 their -- you have to consider how those variables
15 impact the individual child; is that right?

16 A. Well, whether or not -- one example I gave
17 is the presence of a cafeteria. I don't think that's
18 an individual determination. But a student having
19 access to a cafeteria or a library or after-school
20 activities is important for their growth,
21 development, and success.

22 Q. All right.

1 A. So those are the kinds of variables that
2 are important from a systemic perspective for student
3 success that can be correlated with time in a quality
4 educational environment.

5 Q. Are there reasons, though, that a student
6 would not be given access to a cafeteria, and
7 legitimate, non-discriminatory reasons that they
8 would not be provided access there?

9 A. A hypothetical student?

10 Q. Sure.

11 A. Is there a hypothetical student that, for
12 one reason or another, it would be not in their best
13 interest to access a cafeteria?

14 Q. Correct.

15 A. That's right.

16 Q. Okay.

17 A. That's very different than a student who
18 can't access a cafeteria because it's not there.

19 Q. Understood. And would there be legitimate
20 reasons -- similar question, but as opposed to
21 looking at the individual student who has the
22 emotional/behavioral disability, would there be

1 appropriate reasons for the students in the general
2 zoned school, that that child would not be
3 permitted -- that child with emotional/behavioral
4 disability would not be given access to the
5 cafeteria?

6 A. Again, another hypothetical?

7 Q. Right. And what I'm really getting at in
8 a probably very obtuse way is, is it legitimate, in
9 your professional opinion, to also consider the
10 students in the general zoned school, and not just
11 the student with the emotional/behavioral disability?
12 Does that make more sense?

13 A. I'm still not able to answer because of
14 the -- the issue. At first, the question was
15 hypothetical, like, is there ever a circumstance in
16 which there actually is a cafeteria on site, and it
17 would not be in the best interest of a student with
18 disabilities to go into that cafeteria.

19 Q. Mm-hmm.

20 A. And that decision is made, and that's
21 fine. I think the follow-up was whether or not -- do
22 you want to take it from there?

1 MR. BELINFANTE: And I just realized my
2 mic was under the thing. Have you been able to hear
3 me okay?

4 THE VIDEOGRAPHER: Yeah, I just turned you
5 up.

6 MR. BELINFANTE: All right. I'm putting
7 it back on. My apologies.

8 THE VIDEOGRAPHER: No worries.

9 BY MR. BELINFANTE:

10 Q. Would it be appropriate in determining
11 whether a student has access to a cafeteria to
12 consider students who are not being segregated from
13 that cafeteria, and the safety or needs of those
14 students?

15 MS. TUCKER: Object to form.

16 THE WITNESS: Hypothetically, as an
17 educator, it's my goal and hope that we're always
18 attending to the safety and well-being of students.

19 BY MR. BELINFANTE:

20 Q. So that would be an acceptable
21 consideration?

22 A. I don't know.

1 Q. You're familiar, and you cite in your
2 report -- or I don't know if you cite it, but it's
3 referenced in Appendix E -- and I'll make sure I'm
4 using the supplemental.

5 It looks like it's on the third
6 substantive page, an article from Agran, Kurth,
7 Ryndak, et cetera, from 2020 entitled, "Why aren't
8 students with severe disabilities being placed in
9 general education classrooms?" Do you see that?

10 MS. TUCKER: Can you say that again?

11 MR. BELINFANTE: Sure. It's on the third
12 substantive page. It's the first article cited
13 beginning with Agran, M.

14 MS. TUCKER: Okay.

15 MR. BELINFANTE: I'm looking at the
16 amended one.

17 MS. TUCKER: Got it, thank you. I'm good.
18 Thank you.

19 BY MR. BELINFANTE:

20 Q. I'm going to show you what I believe is
21 that article. We'll mark it as Exhibit 4.

22 (McCart Exhibit No. 4 was identified

1 for the record.)

2 BY MR. BELINFANTE:

3 Q. My question is, on the first paragraph
4 under Keywords, the second sentence says, "According
5 to the recently published U.S. Department of
6 Education (2018) 40th Annual Report to Congress on
7 the Implementation of the IDEA (The Individuals with
8 Disabilities Education Improvement Act),
9 approximately one half of students with intellectual
10 or multiple disabilities spend less than 40% of their
11 time in regular classrooms per day."

12 Do you see that?

13 A. I do see that.

14 Q. Okay. Have you read the U.S. Department
15 of Education's 40th Annual Report to Congress from
16 2018?

17 A. I do not recall right now.

18 Q. Any reason to disagree with Agran, et
19 al.'s description of that report, about 50 percent --
20 or one half of students with intellectual and
21 multiple disabilities spend less than 40 percent of
22 their time in regular classrooms per day?

1 MS. TUCKER: Object to form.

2 THE WITNESS: Can you just ask that
3 another way?

4 BY MR. BELINFANTE:

5 Q. Sure. I mean, do you disagree with their
6 description of the report?

7 A. I do not disagree with their description
8 of that report.

9 Q. They go on to say, and this is the next
10 sentence, furthermore, to the extent -- or excuse me,
11 "Furthermore, the extent to which students with
12 severe disabilities are provided access to the
13 general education classroom has remained largely
14 stagnant for the last decade."

15 Understanding this was written in 2020, do
16 you disagree with that statement?

17 A. I don't disagree with the fact that they
18 wrote that sentence.

19 Q. Do you disagree with their conclusion in
20 that sentence?

21 A. I would need to look at the data that they
22 looked at.

1 Q. It then says, "Nationwide, placement
2 practices for these students continue to remain
3 'distinctly separatist,' and discussions about their
4 inclusion in general education classes often become
5 'highly contentious.'"

6 Do you agreed with their conclusion that
7 placement practices for these students continue to
8 remain distinctly separatist, at least as of 2020?

9 A. I'm not sure how they're defining
10 distinctly separatist. But since they put quotations
11 around it, as is the practice, they're likely citing
12 the authors below, Connor and Ferri. And since I
13 don't know what their definition of that means, I
14 can't speak to that. If you have that article, I
15 could look.

16 Q. I don't have that article. But you do
17 cite this article as something that informed your
18 report, correct?

19 A. Yes.

20 Q. Do you agree with their statement that
21 discussions about inclusion in general education
22 classes often become, quote, highly contentious?

1 A. Again, the same thing I mentioned before.
2 Highly contentious as determined by Connor and Ferri
3 in 2007. I just -- I don't know how they're defining
4 that.

5 Q. Is it your experience that it's highly
6 contentious, not using Connor and Ferri's terms, but
7 using your own terms?

8 A. No.

9 Q. Is it your experience that providing
10 access to general education classrooms for students
11 with severe disabilities has remained stagnant from
12 roughly 2010 to 2020?

13 A. Again, I would need -- on that one, I need
14 to look at the data set that they looked at to make
15 that determination.

16 Q. So sitting here today, you can't tell us
17 if there's been progress made in integrating students
18 with severe disabilities into general education
19 classrooms from 2010 to 2020?

20 A. I didn't say that.

21 Q. Is it your opinion that there has been
22 progress, or is it your opinion that it has been

1 stagnant from 2010 to 2020?

2 A. All right. So you're asking if students
3 with disabilities --

4 Q. Severe disabilities.

5 A. In my opinion, whether or not students
6 with severe disabilities have --

7 Q. We'll move on. That's fine.

8 A. I'll just point out that the student
9 population you're referencing here, students with
10 intellectual and multiple disabilities is a specific
11 population of students.

12 Q. Okay.

13 A. Some of which are included in -- some of
14 which have labels that are similar to students in the
15 GNETS program, many of which don't.

16 Q. But they don't define the terms here. So
17 how are you confident in what it means here, but
18 you're not confident in what stagnant means or
19 distinctly separatist?

20 A. Good question. The distinction is because
21 of the quotation marks, because they're citing
22 somebody specific. And that means they're

1 referencing another article in which that information
2 is not provided here, whereas the construction of
3 intellectual disabilities and multiple disabilities
4 is commonplace in the field.

5 Q. And where would one look for those
6 definitions?

7 A. A number of places.

8 Q. You don't rely on the Connor and Ferri
9 article, it appears, based on exhibit A -- or excuse
10 me, Appendix E, amended?

11 A. I -- did I cite that one?

12 Q. You did not.

13 A. Then likely no. Let me turn to the back
14 of this article. A bit of a rabbit hole.

15 Q. Would you not agree with me, though, that
16 if, nationwide, students with severe emotional
17 disabilities are spending less time in a general --
18 or spending 40 percent or less time in a general
19 education classroom, that that would speak to the
20 reasonableness of applying a bright line approach?

21 A. What's a bright line approach?

22 Q. A per se approach, an all-in approach.

1 A. I don't know what you mean at all.

2 Q. A generalized approach.

3 A. I really don't. I'm lost.

4 Q. How much time did you spend in each
5 classroom that you visited, on average?

6 A. Are we done with this?

7 Q. We're done with that, yes.

8 A. Okay.

9 Q. On average, when you visited a GNETS
10 facility, how much -- or school, how much time did
11 you spend, on average, in the classroom?

12 A. It varied. Anywhere from 10 minutes to 90
13 minutes, dependent on the classroom, the
14 circumstances, the site.

15 Q. Who -- and when you say on the
16 circumstances, who is it -- who created those
17 circumstances? In other words, was that your
18 decision to stay 10 to 90 minutes, or was that an
19 agreement reached with the school, do you know?

20 A. It was a mix of variables. Certainly I
21 had the ability to determine length of stay within
22 the confines of the site visit protocol that was

1 established. And so I followed that protocol.

2 And then if anything occurred in the
3 environment, like a teacher was needing a moment or a
4 student was needing something, or whatever,
5 contextually, based on my experience, that I thought
6 it was, you know, time to step out and maybe come
7 back later, I would do so.

8 Q. Okay. In your review of students who are
9 receiving services through GNETS, did you find anyone
10 who was receiving those services for whom their IEP
11 team did not recommend that they receive services in
12 GNETS?

13 A. I'm sorry to have to ask you to repeat
14 that.

15 Q. Sure. Of the students who you reviewed
16 that received GNETS services, did you see or find an
17 occasion where a student was receiving services
18 through the GNETS Program, and that student was not
19 recommended for GNETS services by their IEP team?

20 A. I did not review all of the IEPs for every
21 student in the GNETS program, so I cannot speak to
22 that. If you're asking whether or not the

1 recommendation was made for each IEP that I did
2 review, I cannot recall right now, sitting here. I'd
3 need to take a look at those to see if there were
4 recommendations made differently by the IEP team.

5 Q. Do you understand -- is it your
6 understanding that in order for someone to receive
7 services through GNETS, there has to be a
8 recommendation from their IEP team to do so?

9 A. There is a referral process to GNETS that
10 includes that an IEP determine that that would be an
11 appropriate placement.

12 Q. Is it your understanding that that
13 determination -- and you may have said this, I'm just
14 asking for the record. Is it your understanding that
15 that IEP team recommendation is a requirement to
16 receive services through a GNETS program?

17 A. I believe that it is part of the
18 pre-referral process to -- or the referral process to
19 the GNETS program. Whether or not it's a
20 requirement, I don't know.

21 Q. And so I understand that, sitting here
22 today, you can't recall any instance where a student

1 was receiving services through a GNETS program, and
2 that student's IEP did not recommend that they
3 receive GNETS services?

4 A. I don't recall, one way or another. I'd
5 have to review the students' IEPs again.

6 Q. Would that concern you if a student was
7 receiving services in GNETS, and it was not
8 recommended by their IEP team?

9 A. Yes.

10 Q. Let's look at page 6 of your report. It's
11 actually page 7, where you provide a series of
12 definitions. My specific question is about the
13 definition of unfair, which you define as describing
14 "situations that are not right or fair, according to
15 a set of principles, rules, or standards. Synonyms
16 of unfair include one-sided, discriminatory, unjust,
17 or inequitable."

18 What are the set of principles, rules, or
19 standards that you applied in reaching the
20 conclusions of your report?

21 A. Are you asking something about unfair?

22 Q. Well, yeah, because unfair includes, it's

1 not right or fair according to a set of principles,
2 rules, or standards. I'm just trying to figure out,
3 when you made a determination that something was
4 unfair, which set of principles, rules, or standards
5 did you apply?

6 A. Okay, I'm following you now.

7 Q. Okay.

8 A. Probably the best way to understand the
9 distinction between unfair and unequal, for example,
10 is unequal would be this group of students over here
11 has a playground, and this group of students does not
12 have a playground. And from my perspective, that's
13 unequal. One has something, the other doesn't have
14 something. And I'm getting to your question.

15 Unfair, from my perspective, would be this
16 group of students has a playground, but this -- and
17 this group of students also has a playground, but
18 that playground is much smaller, of less quality,
19 of -- is in bad shape or is fenced in the middle of a
20 larger playground, as is the case at one site. And
21 that is unfair because those students are there
22 observing other students playing on a playground in

1 which they have all they need. That's kind of a
2 working definition of how I distinguish between
3 unequal, unfair.

4 As it relates to what was included in the
5 report, unequal would be -- or equal would be items
6 such -- items, occurrences, events, things,
7 experiences that are typical in general education
8 and/or -- general education, in which students with
9 disabilities also participate. Whereas, fairness
10 would be whether or not those students have the
11 ability to participate in those experiences. So I
12 don't know if that got to where you wanted.

13 Q. Not so much.

14 A. Okay.

15 Q. I appreciate it.

16 A. Let's go again.

17 Q. It may have shortened some other
18 questions, so I mean, it's fine.

19 A. Okay.

20 Q. But I think that the question is probably
21 a bit theoretical anyway, so we can just move on.

22 You brought up playgrounds. Do you have

1 any understanding of the distinctions between local
2 and state governments as it relates to providing
3 playgrounds? And by providing, I mean making the
4 decision to use dollars to build playgrounds or
5 update them, repair them, whatever else.

6 A. I know that it's common in schooling
7 experience for students to have access to playgrounds
8 and gymnasiums, cafeterias, libraries, et cetera.

9 Q. Right. But my question is, do you have an
10 understanding as to whether LEAs or state government
11 in Georgia make the decision on where to invest the
12 dollars on playgrounds or gymnasiums, et cetera?

13 A. I do not, no.

14 Q. Okay. Is it your understanding that LEAs
15 and -- let me back up a second.

16 Are you familiar with the term RESA?

17 A. Yes.

18 Q. Okay. Is it your understanding that LEAs
19 and RESAs are legally mandated to apply for GNETS
20 grants?

21 MS. TUCKER: Object to form.

22 THE WITNESS: I do not know what they're

1 legally required to do.

2 BY MR. BELINFANTE:

3 Q. Is it your understanding that there is
4 anything in Georgia that compels LEAs and RESAs to
5 apply for GNETS grants?

6 A. Can you ask that again?

7 Q. I think we're fine. I'll move on.

8 A. Okay.

9 Q. In your review of students in GNETS, did
10 you find in any case where someone employed by the
11 State Department of Education mandated that a child
12 receive services from GNETS?

13 A. Are you asking if a state representative
14 of the State Department identified an individual
15 child and mandated that they receive services?

16 Q. Mm-hmm, through GNETS.

17 A. I'm not aware of that.

18 Q. Okay. The same question, did you find
19 that from an employee of the Department of Community
20 Health?

21 A. No.

22 Q. And the same question. Did you find that

1 from an employee of the Department of Behavioral
2 Health and Developmental Disabilities?

3 A. No.

4 Q. You cite a series of articles in your
5 report on page 3 to 6. Do you see that?

6 A. Yes. I'm sorry, yes.

7 Q. No, that's fine. Let's look at page 4.
8 The first full paragraph starts with, "When students
9 with disabilities are educated outside the general
10 education setting, in separate buildings, wings,
11 rooms, or isolated settings of any kind, they
12 experience a number of adverse outcomes across
13 academic, social, emotional, and behavioral
14 detriments."

15 Do you see that?

16 A. Mm-hmm.

17 Q. And you cite the -- is it Ennis?

18 A. Mm-hmm.

19 Q. Okay, Ennis and Katsiyannis; is that
20 correct?

21 A. That's very good.

22 Q. 2017 article for that proposition.

1 MS. TUCKER: I just want to correct, it
2 was "behavioral determinants."

3 MR. BELINFANTE: Okay. Thank you. What
4 did I say this time?

5 MS. TUCKER: Detriments.

6 BY MR. BELINFANTE:

7 Q. If a student is experiencing adverse
8 outcomes across academic, social, emotional, and
9 behavioral determinants, are they being denied a
10 FAPE, in your professional opinion?

11 A. I don't know how to apply the construct of
12 FAPE to this sentence here.

13 Q. Okay. Let me show you what we'll mark as
14 Exhibit 5.

15 (McCart Exhibit No. 5 was identified
16 for the record.)

17 BY MR. BELINFANTE:

18 Q. Is this the article that you are citing on
19 page 4?

20 A. In order to answer that question, I'm
21 going to the list of considered documents, Appendix
22 E.

1 Q. Right.

2 A. I'm going to the citation that begins --
3 comparing author names, because sometimes they write
4 more than one in a year. And, yes, it appears that
5 it is.

6 Q. Okay.

7 A. Yep, it is.

8 Q. Okay. Would you agree with me that this
9 article that you cite for that conclusion is about
10 the IDEA, and not the ADA?

11 A. I would need to read the article, but IDEA
12 is in the title.

13 Q. And what the article is talking about is
14 the denial of FAPE, because that's an IDEA concept,
15 correct? Stop, let me rephrase.

16 The denial of FAPE is an IDEA concept;
17 isn't that right?

18 MS. TUCKER: Object to form.

19 THE WITNESS: You're asking, is FAPE
20 included in the IDEA?

21 BY MR. BELINFANTE:

22 Q. Is it an analysis of IDEA or mandated by

1 the IDEA, yes.

2 MS. TUCKER: The same objection.

3 BY MR. BELINFANTE:

4 Q. In other words, if someone were to apply
5 the IDEA, do you look toward, among other things,
6 sure, but do you look towards whether a student is
7 receiving a FAPE?

8 MS. TUCKER: The same.

9 THE WITNESS: Again, from an educator
10 perspective, the implementation of FAPE is included
11 as part of IDEA.

12 BY MR. BELINFANTE:

13 Q. Okay. On page 306 of this article. 306,
14 sorry, of Exhibit 5.

15 A. And is it, like, 302 or --

16 Q. 306 of the article itself.

17 A. 306?

18 Q. Yes.

19 A. Okay.

20 Q. Using the article's paginated numbers. In
21 the second column, the last sentence starts, "School
22 personnel are allowed to exercise professional

1 judgment in addressing performance concerns" --

2 A. Pause, pause, because I don't want you to
3 read it all before I find it. Where?

4 Q. Second column, right there at the bottom.

5 A. And the sentence starts?

6 Q. "School personnel."

7 A. Got it.

8 Q. "School personnel are allowed to exercise
9 professional judgment in addressing performance
10 concerns by implementing instructional and behavioral
11 interventions without referral for eligibility under
12 IDEA."

13 Do you see that?

14 A. Yes.

15 Q. Do you agree with that statement,
16 generally?

17 MS. TUCKER: Object to form.

18 THE WITNESS: Are school -- I think, are
19 you asking, are school personnel allowed to implement
20 behavioral and instructional interventions for
21 students without eligibility for IDEA?

22 BY MR. BELINFANTE:

1 Q. Yes.

2 A. Yeah.

3 Q. Okay. Going back to your report, the next
4 sentence in that first full paragraph after the
5 citation we just discussed, it begins, "Conversely,
6 when" --

7 A. Page?

8 Q. Page 4.

9 A. Okay.

10 Q. First full paragraph, second sentence.

11 "Conversely, when served in inclusive general
12 education classrooms and environments, students with
13 disabilities show growth in academic outcomes,"
14 citing Kurth and Mastergeorge from 2010. I know it
15 goes on, but I'm going to ask about Kurth and
16 Mastergeorge first.

17 And I'll show you what we'll mark as
18 Exhibit 6.

19 (McCart Exhibit No. 6 was identified
20 for the record.)

21 BY MR. BELINFANTE:

22 Q. This is the 2010 article cited in your

1 report, correct?

2 A. I'll have to -- hang on. Well, I'm not
3 sure, but go ahead and ask your question.

4 Q. The study that this article talks about,
5 and you can see it on page 147, which is the second
6 page of the article under Method.

7 A. Mm-hmm.

8 Q. "Five special education teachers and 15
9 adolescents with autism participated in the study."

10 Do you see that?

11 A. Yes.

12 Q. And then it goes on to say, "three school
13 districts were ultimately enrolled in the study,
14 although six districts were contacted. The districts
15 contacted represent diverse student populations and
16 methods of educating students with autism in Northern
17 California."

18 Do you see that?

19 A. Yes, I do.

20 Q. Okay. So is it your recollection that
21 this article, from which you base that conclusion,
22 cites 15 students in Northern California?

1 A. I do not know. I would need to look at
2 the results section.

3 Q. Okay. Going back to your report, page 4.
4 The provision about increased social interactions
5 cites the Lyons, Cappadocia, Weiss study from 2011.

6 A. Uh-huh.

7 Q. I may need to get -- let me -- I'll move
8 on from that. I need to get copies of that.

9 Would it surprise you if that study looked
10 at autism only, the Lyons, Cappadocia, and Weiss from
11 2011?

12 A. No.

13 Q. In your -- do you have any professional
14 training in statistics?

15 A. Yes.

16 Q. Do you consider a study of 15 students in
17 Northern California to be a sufficient sample size to
18 make a statement that students with disabilities show
19 growth in academic outcomes?

20 A. There are a number of variables that
21 determine whether or not statistical significance can
22 be stated using a variety of measures. Whether or

1 not the article that you're referencing has
2 statistically significant outcomes, I would need to
3 look. Certainly it is well-documented in over 30
4 years of literature that students with disabilities
5 have better academic outcomes when in general
6 education.

7 Q. But, Dr. McCart, you cited Kurth and
8 Mastergeorge, right?

9 A. That is one article that I cited, yes.

10 Q. And that's one article about 15 kids with
11 autism in Northern California, correct?

12 A. I haven't read the article. If you'd
13 like, I could read the results section and --

14 Q. Well, I just presumed if you put it in
15 here, you were standing by it, and you would be
16 familiar with it.

17 A. I am familiar with it.

18 Q. Then you can answer the question.

19 A. I can't answer a question --

20 Q. 15 kids in Northern California with
21 autism, correct?

22 A. I thought we weren't going to interrupt

1 each other.

2 Q. Continue, I'm sorry.

3 A. If you would like me to answer the
4 question that you're asking, I need to read the
5 results section.

6 Q. Do you need to read the results to
7 determine the cohort used?

8 A. I don't know, because I haven't seen what
9 they've said about who they studied, and what they've
10 done. So you're asking me to guess.

11 Q. I'm asking you to explain your report.
12 I'm not asking you to guess anything.

13 A. I can explain in my report that this
14 article, among others, indicate that students have
15 adverse outcomes across academic, social, emotional,
16 and behavioral determinants.

17 Q. Jennifer Kurth, does she work with you
18 still at SWIFT?

19 A. Jennifer Kurth is the chair of the
20 Department of Special Education, but -- chair of the
21 Department of Special Education at the University of
22 Kansas.

1 Q. Does she work with you professionally?

2 A. We have worked together, yes.

3 Q. Did you consult her on your report?

4 A. No.

5 Q. Let's go back to your -- what is your
6 training in statistical analysis?

7 A. I'm a senior researcher at a Research I
8 university in the top rated -- one of the top rated
9 universities in special education. And that includes
10 a comprehensive and thorough course load and
11 experience in conducting large-scale, systemic
12 reviews, including statistical analyses.

13 Q. And what is your training that has
14 provided you an opportunity to do that?

15 A. A doctoral degree.

16 Q. In statistics?

17 A. A doctoral degree in special education, in
18 which statistical analyses and statistical courses
19 are part of that process.

20 Q. Hypothetically, in your experience
21 involving statistics, would a study about 15 students
22 with autism in one area of one state constitute a

1 statistically significant sample?

2 A. It very well could, yes.

3 Q. And on what basis could it?

4 A. Hypothetically, it could be any number of
5 things.

6 Q. What does statistically significant mean
7 to you?

8 A. Sitting here, I can't recall the specific
9 definition, because it is deeply complex, and it can
10 include variables, such as different methodologies,
11 different variables, different independent, dependent
12 variables. It can -- the -- how the sample was
13 selected. A variety of other elements can determine
14 statistical significance.

15 Q. Forgive me, because this is probably in
16 your CV, and I just don't know the answer. Were
17 you -- in 1990, when the ADA passed, where were you
18 at that time in your career? For all I know, you
19 were in high school. So, like, don't misunderstand.

20 A. Yeah, let's go with that. No, I had
21 children by then. Let's see where I was in my career
22 in 1990.

1 Q. It looks like you had graduated, I guess,
2 from the University of Kansas with a bachelor of
3 science.

4 A. Yes. And let's see, a few -- a few
5 statements. I had a bachelor's degree from the
6 University of Kansas as part of the Department of
7 Applied Behavioral Sciences, with an emphasis on
8 human development and family life, with a focus on
9 students who had behavioral disabilities.

10 Q. That's sufficient. I don't need to get
11 into all the details. I honestly was trying to
12 remember, like, if you had graduated college or truly
13 were in high school or something else. But that's
14 fine.

15 A. Well, thank you. I want to add just a
16 little bit more, in that I was working in an
17 organization -- because it's relevant, I think, to
18 what you're saying. I was working in an organization
19 that supports adults and students who have
20 significant disabilities, with a particular emphasis
21 on students who had a variety of different behavioral
22 disabilities.

1 Q. Are you aware that the ADA passed in 1990,
2 thereabouts?

3 A. I don't recall the dates right now.

4 Q. Do you know if the ADA has been updated
5 since it passed originally?

6 A. I do not recall --

7 MS. TUCKER: Object to form.

8 BY MR. BELINFANTE:

9 Q. And just for the record, are you aware of
10 whether or not Congress has amended the ADA since
11 1990, or its original passage?

12 A. I don't recall right now. I know I know
13 these things, but sitting here right now, I can't
14 pull it off the top of my head.

15 Q. Okay. Do you know if the IDEA has been
16 amended by Congress since it originally passed?

17 MS. TUCKER: Object to form.

18 THE WITNESS: Again, I should know this,
19 and I may know this, but I can't recall dates right
20 now.

21 BY MR. BELINFANTE:

22 Q. Okay. Do you recall, sitting here today,

1 if the No Child Left Behind legislation addressed
2 special education?

3 A. I can say that regarding IDEA, ADA,
4 implementation of No Child Left Behind, as well as a
5 number of other educational policies and practices,
6 that my understanding of those are very much related
7 to implementation of those in the field.

8 Q. Okay.

9 A. So although I may not recall, sitting here
10 today, the exact date or time in which a specific
11 policy, or law, or et cetera changed or transpired,
12 or whatever else, I can speak in great depth about
13 what that looks like to be implemented in the field.

14 Q. Okay. And I guess, is that also true for
15 the Every Student Succeeds Act, which passed in 2015?

16 A. That is also true for that.

17 Q. Okay.

18 A. That's one place you can look for a
19 definition of MTSS.

20 Q. Okay.

21 MR. BELINFANTE: What time do you all want
22 to break for lunch?

1 (Discussion held.)

2 THE VIDEOGRAPHER: Off the record at
3 12:36.

4 (Whereupon, at 12:36 p.m., the testimony
5 in the above-entitled matter was recessed, to
6 reconvene at 1:15 p.m., this same day.)

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1 AFTERNOON SESSION

2 (1:15 p.m.)

3 EXAMINATION BY COUNSEL FOR DEFENDANT (RESUMED)

4 THE VIDEOGRAPHER: On the record at 13:15.

5 BY MR. BELINFANTE:

6 Q. If I could draw your attention -- let me
7 ask this first. And I think part of it is -- I asked
8 before. Did you review most students' in GNETS IEP?

9 Let me rephrase.

10 Did you review the IEP of most students in
11 GNETS? That's probably a clearer way of asking.

12 A. I reviewed -- out of the almost 3,000
13 students in the GNETS program, I reviewed somewhere
14 between 65 to 100 IEPs.

15 Q. And you would agree with me, that is not
16 the vast majority of students in the GNETS program,
17 correct?

18 A. That is not the vast majority of the
19 students in the GNETS program.

20 Q. Would you agree with me that students in
21 the GNETS program, there are certainly students who
22 are receiving GNETS services who have autism, but

1 there are also students in the GNETS program who do
2 not have autism. Would you agree with that?

3 A. Yes.

4 Q. Okay. Let's look at page 157 of your
5 report, Exhibit 1. At the bottom of the page under
6 opinion in finding 3, the last full sentence reads,
7 they are even more concerning when one considers --
8 sorry. "They are even more concerning when one
9 considers that the placement of most students in the
10 GNETS program is unnecessary."

11 Do you see that?

12 A. No. Where are we at?

13 Q. Page 157, bottom of the page.

14 A. Oh, yeah, I see it.

15 Q. Okay. So if you did not read most IEPs,
16 what was the basis of your conclusion that most
17 students in the GNETS program, the placement there is
18 unnecessary?

19 A. Given my extensive experience and
20 understanding of students with disabilities,
21 behavior-related disabilities, autism, and other
22 needs, I am aware of the appropriate supports and

1 services that can be put in place in order to support
2 students in an environment in which they have equal
3 -- or fair and equal access to those opportunities.

4 And as I said earlier today, one
5 indication of whether or not segregation is necessary
6 or unnecessary is related to the IEP. The other is
7 about what services and supports are provided in
8 order to make -- to have successful educational
9 placements for students.

10 Q. Would you agree with me that if the full
11 panoply of services that you would support are being
12 provided, there are still some students who could --
13 even if they had access to those services, would
14 still need a segregated educational environment?

15 A. I -- I don't know your definition of
16 "panoply," although that's a fun word. Just saying.

17 Q. I've got more fun words.

18 A. But even if the full array of supports and
19 services were being provided, certainly there are
20 some students, under certain conditions for certain
21 periods of time, that do need placements in which
22 there are smaller numbers of students and away from

1 general education.

2 Q. And if you could turn to page 159 of your
3 report, the last full paragraph that starts with,
4 "With any student population across the country."

5 A. 159. And which --

6 Q. I'm going to ask a question about this
7 last full paragraph that starts, "With any student
8 population across the country."

9 A. Mm-hmm.

10 Q. Certainly feel free to get there. My
11 question is going to be about the sentence that
12 starts, "There are a small number of the nearly 1,000
13 students I observed who had very serious and extreme
14 behaviors that require highly specialized teaching
15 and behavioral support." But I didn't know if you
16 wanted -- I can ask the question now.

17 A. Are you -- so you're saying with any
18 student -- I'm saying with any student population
19 across the country, there are a small number of
20 students who have very serious extreme behaviors that
21 require well trained, highly specialized teaching and
22 behavior support, including carefully planned

1 schedules of interaction with others in order for
2 them to experience success.

3 Q. My question is about the sentence after
4 the one after that.

5 A. Okay.

6 Q. Which is, "There are a small number of the
7 1,000 students I observed who have very serious and
8 extreme behaviors that require highly specialized
9 teaching and behavioral support."

10 MS. TUCKER: I just want to jump in, it
11 was "nearly 1,000 students."

12 BY MR. BELINFANTE:

13 Q. Nearly 1,000 students.

14 A. Yes. And it says the same is true in the
15 GNETS program, that there are a small number of
16 students who require highly specialized teaching and
17 behavior support.

18 Q. And that's based on your observations from
19 10 to 90 minutes of students; is that correct?

20 A. It's based on my observation of students.
21 It's based on my examination of individual student
22 records, including IEPs. It's based on my review of

1 -- year over year of student documentation regarding
2 support and need. It's based on my review of parent
3 documentation, incident reports, among other
4 documents.

5 It's also based on the fact that I've
6 spent an extensive period of time working with
7 students with a full range of behavior needs, but in
8 particular, with students who have very significant,
9 challenging behavior. Therefore, I am adept at
10 identifying student need in as small a window as ten
11 minutes to up to, in the case of these observations,
12 90 minutes.

13 Q. So do you have any -- can you point to
14 any -- because there's none cited. Can you point to
15 any peer-reviewed articles that would say you can
16 observe what a child needs in ten minutes of
17 observation?

18 A. I can -- well, I don't accept the premise
19 of what you're asking.

20 Q. You just told me you could observe someone
21 within ten minutes and make a decision as to what
22 they needed.

1 A. Based on the observations that I did, my
2 extensive experience in the field, my deep
3 understanding of students who have significant
4 behavioral needs, as well as the documents I
5 reviewed, the depositions I reviewed, and all of the
6 other supporting information, I feel very comfortable
7 in making the statement that I made here.

8 Q. And my question is, can you point to me
9 any peer-reviewed article where someone says, you can
10 determine, based on watching someone for ten minutes,
11 what their needs are, and their appropriate needs are
12 in terms of services and therapeutic supports?

13 A. There are thousands of peer-reviewed
14 articles. And if you would like me to look for one
15 that talks about the length of observation time, it
16 varies over -- there's all kinds of indicators of
17 what are appropriate regarding classroom
18 observations. You can take within a ten-minute time
19 period, sir, by way -- are you with me?

20 Q. I'm listening.

21 A. By way of example, within a ten-minute
22 time period in a given classroom, particularly if

1 there's a small number of students in the classroom,
2 you can observe levels of engagement of the students
3 in the classroom, numbers of problem behaviors,
4 communication styles, teaching interaction, response
5 to teaching interaction, et cetera.

6 Q. And from that ten minutes -- well, first
7 off, can you point to me any article cited in
8 Appendix E, amended, that says what you just
9 described?

10 A. Says what?

11 Q. That you could observe in ten minutes what
12 someone's appropriate services would need to be?
13 Because this is what you relied on for your report.
14 So can you show me anything that's cited in here that
15 says, within ten minutes, you could make that
16 determination?

17 A. I would have to look.

18 Q. Okay.

19 A. Let me do so. I don't know if I included
20 classroom observation peer-reviewed articles.

21 It will take me a minute to read all of
22 the articles I've listed here, to determine whether

1 or not I included one that talked about the amount of
2 time it takes to assess a classroom environment.

3 Q. If an IEP team member spent ten minutes
4 with a student, would you find that to be sufficient
5 time to make a recommendation?

6 A. To make a recommendation on what?

7 Q. As to whether that student needed -- what
8 types of services and supports would be appropriate
9 for that student?

10 A. So the question again is?

11 Q. If an IEP team -- if the members of an IEP
12 team spent ten minutes with a student, would you feel
13 confident in their recommendation for that student,
14 that they could be educated in a general education
15 setting or a separate education setting?

16 A. No.

17 Q. And you would agree with me that in the
18 ten minutes you observed a child, you don't have
19 access in that ten minutes to their medical file,
20 correct?

21 A. No.

22 Q. Could you turn to page 167 of your report?

1 A. Am I done looking for peer-reviewed --

2 Q. We can come back to it. That's fine.

3 A. Where are we?

4 Q. I'm sorry, page 167.

5 A. Okay. Mm-hmm.

6 Q. In the paragraph under Conclusion, midway
7 through, there is a sentence that starts, "Year after
8 year."

9 A. Yes.

10 Q. Okay. "Year after year, the state has
11 encouraged and perpetuated this idea by dedicating
12 over \$60 million to the GNETS program (most of which
13 are state funds), despite its gross lack of
14 educational opportunities, adequate resources, and
15 appropriate supports."

16 Do you see that?

17 A. I do see that.

18 Q. Okay. How has the state encouraged the
19 idea, which I believe is -- I should have probably
20 gone the sentence above. It says, "the GNETS program
21 is based upon the idea that segregating mass amounts
22 of students with behavior-related disabilities is

1 necessary in order to offer them intensive social,
2 emotional, and behavioral therapeutic services and
3 supports."

4 It then continues to the sentence that I
5 read a moment ago. "Year after year, the state has
6 encouraged or perpetuated this idea by dedicating
7 over \$60 million to the GNETS program (most of which
8 are state funds), despite its gross lack of
9 educational opportunities, adequate resources, and
10 appropriate supports."

11 How has the state's appropriation of funds
12 perpetuated an idea?

13 MS. TUCKER: Object to form.

14 BY MR. BELINFANTE:

15 Q. Or how has the state's appropriation of
16 funds perpetuated the idea that you describe on page
17 167 of your report?

18 A. By dedicating over \$60 million to it.

19 Q. How has that perpetuated an idea?

20 A. By supporting a system of systemic
21 segregation for multiple students in the GNETS
22 program year after year after year, and continuing to

1 allocate 60 million or more funds to that. That is
2 perpetuating an ineffective system.

3 Q. Does the state require local education
4 agencies to apply for GNETS grants?

5 A. I don't know.

6 Q. So if you don't know, then how do you
7 blame the state for perpetuating a system if you
8 don't know that the LEAs are the ones that are
9 applying for the grants?

10 MS. TUCKER: Object to form.

11 THE WITNESS: I don't know what you're
12 asking. Can you try --

13 BY MR. BELINFANTE:

14 Q. Well, you said that the state perpetuates
15 a system.

16 A. By funding it.

17 Q. By funding it. My question is -- and so
18 then I asked, do the local education agencies have to
19 accept the funding? Your answer is, I don't know,
20 correct?

21 A. I don't know what you're asking.

22 Q. I'm asking, do the LEAs have to accept any

1 of the \$60 million appropriated by the Georgia
2 General Assembly for the GNETS services?

3 A. I do not know.

4 Q. So then how do you know or opine that the
5 state has encouraged and perpetuated an idea that you
6 described?

7 A. Because of what I've already said.
8 There's a program in the state, across the state,
9 over 24 regions within the state, in which over \$60
10 million or more has been continually committed to
11 that program year after year. That's how.

12 Q. Is the state mandating the program?

13 A. I don't know.

14 Q. Do you know if there's federal funds that
15 are also going to GNETS?

16 A. I do not know.

17 Q. Well, it says, "most of which are state
18 funds." So you don't know if there's any federal
19 dollars going to the GNETS program?

20 A. I do not know.

21 Q. Isn't it true that this is a cause for
22 you, integration of students?

1 A. This is a cause for me?

2 Q. Yes.

3 A. What do you mean?

4 Q. I mean, you just said earlier it's your
5 life's work. Page 167 says it's your "fervent belief
6 and expert opinion that these students do not need to
7 be segregated to be effectively served."

8 MS. TUCKER: Where is that?

9 MR. BELINFANTE: Page 167, two sentences
10 after -- or one sentence after what I just said.

11 THE WITNESS: Are you asking a question
12 about cause, or are you asking a question about --

13 BY MR. BELINFANTE:

14 Q. You say it's your fervent belief. Why
15 don't you tell me what you mean by fervent belief.

16 A. It's my fervent belief and expert opinion
17 that these students -- and I'm referencing students
18 currently in the GNETS program -- do not need to be
19 segregated to be effectively served. The vast
20 majority of them can and should be served in
21 integrated settings with appropriate services and
22 support, where they are more likely to experience

1 social, emotional, behavioral, and academic success.

2 What I'm referencing here is the fact that
3 I went on over 70 site visits, hundreds of
4 classrooms, over 18 months of time, observing nearly
5 a thousand students. And based on my expert opinion,
6 I do not believe that these particular students need
7 segregation en masse across the state.

8 Q. And of that -- that is based -- okay, I
9 think I've asked that question.

10 Let me ask you to turn to page 157. The
11 top of the page, first full paragraph, last sentence.
12 "It is clear that the State of Georgia contributes to
13 this hopelessness by maintaining the GNETS program in
14 its current form and failing to provide opportunities
15 for these students to succeed in their home schools."

16 Do you see that?

17 A. I do see that.

18 Q. Okay. What is the State of Georgia doing
19 to maintain -- let me back up.

20 What is the State of Georgia Department of
21 Education doing to maintain the GNETS program in its
22 current form?

1 A. That sentence comes at the end of a
2 section on hopelessness, in which I highlight some of
3 the most devastating experiences of involvement with
4 students that I've seen over the course of my career,
5 including students crying and begging to leave
6 classrooms.

7 And many of these students have been in
8 this program for more than five, six, seven years,
9 year after year after year, which is what I
10 referenced at the end of the report. The State
11 Department of Education is supposed to provide a
12 vision, guidance, professional learning, support,
13 teaching, effective practices for LEAs and schools
14 across the state.

15 It is not intended to support a systemic
16 system of segregation for students with
17 behavior-related disabilities in programs that aren't
18 even schools. Page 20.

19 Q. What is the Department of Education
20 specifically doing to maintain the GNETS program in
21 its current form? Can you point to me a specific
22 action?

1 A. All of the things I just said.

2 Q. You said it's supposed to --

3 A. They are funding a -- oh, I'm sorry, go
4 ahead.

5 Q. No, no, go ahead.

6 A. They are funding a program that supports
7 systemic segregation across the state, 24 regions
8 across the whole state.

9 Q. If I told you that the United States
10 Department of Education funds are also going to
11 GNETS, is the United States Department of Education
12 also responsible for what you describe as unnecessary
13 segregation?

14 A. I don't know about that.

15 Q. I'm asking you to presume that the United
16 States Department of Education funds are going to
17 GNETS. If that presumption is true, is the United
18 States Department of Education causing unnecessary
19 segregation in the State of Georgia by funding the
20 program?

21 A. I don't really feel comfortable speaking
22 hypothetically about what the United States

1 Department of Education is doing or not doing. I'm
2 not --

3 Q. I'm sorry you feel uncomfortable. I'm
4 asking you to answer the question.

5 A. I don't know.

6 Q. You don't know.

7 A. Hmm-mm.

8 Q. So if the United States Department of
9 Education funds the program, you don't know. If the
10 Department of Education, as you described, funds the
11 program, it is committing unnecessary segregation.

12 MS. TUCKER: Object to form.

13 BY MR. BELINFANTE:

14 Q. What's the difference?

15 A. I was asked to evaluate the system of
16 support in the State of Georgia, and that's what I've
17 done. And that's what I've looked at.

18 Q. I understand. That's not what I'm asking.
19 I'm asking -- you said the Department of Education is
20 funding. Putting aside any disagreements on that,
21 you said, by funding the program, the DOE is leading
22 to systemic segregation.

1 A. I did not say that.

2 Q. Can you read back what she said about five
3 minutes ago?

4 (Reporter read back as requested.)

5 BY MR. BELINFANTE:

6 Q. So given that the specific thing that the
7 Georgia DOE is doing, according to you, is funding a
8 program. My question, and it is a hypothetical, is I
9 would like you to presume that there are federal
10 United States Department of Education dollars flowing
11 through to the GNETS programs through -- or to LEAs
12 who choose to apply for grants.

13 If that's true, is the United States
14 Department of Education also funding a system of
15 systemic segregation, in your opinion?

16 MS. TUCKER: Object to form.

17 THE WITNESS: You said earlier, what are
18 the ways in which the state is perpetuating this
19 environment. And I said --

20 BY MR. BELINFANTE:

21 Q. I said specifically the Department of
22 Education, which may be different.

1 A. GaDOE.

2 Q. Yes, yes.

3 A. How is GaDOE --

4 Q. Yes.

5 A. The Georgia State Department of
6 Education --

7 Q. Yes.

8 A. -- perpetuating this.

9 Q. Yes.

10 A. And I said that the state is to provide a
11 vision, guidance, leadership, professional learning,
12 all of these array of things, rather than funding a
13 program that perpetuates systemic segregation.

14 Q. Okay. Putting aside differences in your
15 previous answer, what you've just described are
16 things that the Department of Education is not doing.
17 I'm asking, what is the affirmative thing that the
18 Department of Education in Georgia is doing to cause
19 the harms that you describe in your report?

20 MS. TUCKER: Object to form.

21 THE WITNESS: Maybe the easiest way to
22 answer that is to look at the recommendations to see

1 what would be an effective pathway for the State of
2 Georgia to -- the Georgia State Department of
3 Education to follow, in terms of creating a guidance,
4 vision, policy, direction towards educational
5 environments that provide a continuum of support.

6 BY MR. BELINFANTE:

7 Q. We will get to that. My question, though,
8 is about your statement on page 157 that "the State
9 of Georgia contributes to this hopelessness by
10 maintaining the GNETS program in its current form."

11 What is the Department of Education in
12 Georgia doing to maintain the GNETS program in its
13 current form? Other than not doing the series of
14 things that you recommend, what is it affirmatively
15 doing?

16 MS. TUCKER: Object to form.

17 THE WITNESS: I believe that the State of
18 Georgia is not providing effective vision, guidance,
19 support, professional learning, and resources to
20 provide students with disabilities an appropriate,
21 fair, and equal education along a continuum of
22 support.

1 BY MR. BELINFANTE:

2 Q. What is the Department of Community Health
3 doing affirmatively to cause unnecessary segregation
4 in Georgia education?

5 A. I did not -- I don't know.

6 Q. How about -- go ahead, sorry.

7 A. But that's one. What I said previously,
8 that's one of many things that I feel the State
9 Department of Education in Georgia is doing that
10 helps perpetuate a system that is not effective, but
11 go ahead.

12 Q. What would it cost the State of Georgia,
13 in your opinion, to provide sufficient or appropriate
14 supports for all students currently receiving
15 services through the GNETS program?

16 A. I did not do any sort of cost analysis,
17 just to make sure that I'm restating that.

18 Q. Right.

19 A. But based on my experience in implementing
20 across the U.S. -- different states across the U.S.,
21 the implementation of my recommendations would cost
22 the state no more money than what's already being

1 allocated to the services of students with
2 disabilities, behavior-related disabilities.

3 Q. And the money you're talking about being
4 allocated is the appropriation to the GNETS program?

5 A. I'm talking about the funding that's
6 allocated for students with disabilities within the
7 state, wherever that source is.

8 Q. Did you ever look at a Georgia
9 appropriations document -- or I'm sorry,
10 appropriations act of the Georgia General Assembly.

11 A. I do not recall. I don't think so, but I
12 could have.

13 Q. I didn't see it in Appendix E. So
14 similarly, do you know how much Georgia spends, as
15 you just described, on providing care and treatment
16 for students -- for persons with behavioral and
17 emotional disabilities?

18 A. In the GNETS program?

19 Q. At all. Didn't you just say that you were
20 looking broadly at everything?

21 MS. TUCKER: Object to form.

22 BY MR. BELINFANTE:

1 Q. So let's back up, because I think -- how
2 much would it cost, do you know, to provide the types
3 of supports and services to students -- and I mean
4 actual services, not just MTSS training, actual
5 services -- to students that would be appropriate, in
6 your opinion, in Georgia?

7 A. Based on my experience in implementing in
8 a number of other states, the costs of implementing
9 the kinds of recommendations that I'm suggesting here
10 is no more than what is currently being spent in
11 special education dollars within the state.

12 Q. And so by --

13 A. I have not done a specific cost analysis.

14 Q. So including in appropriate supports, are
15 you including group therapy?

16 A. Umm.

17 Q. I'm trying to determine what services you
18 think schools need to provide in order to avoid, as
19 you call it, placement in the GNETS program. What
20 are the specific services that a school needs to
21 provide?

22 A. So what is, like, a full array of services

1 that might be provided to any student with a
2 behavior-related disability?

3 Q. That would be appropriate, yes.

4 A. In the world? I mean, in the U.S. or --

5 Q. Yeah, what would be appropriate? Because
6 I understand appropriate means, like, look, we would
7 all love to have, for example, individual therapy.
8 But that's not necessarily appropriate for the --

9 A. That's not appropriate.

10 Q. Right. So I'm not asking you for shoot to
11 the moon and name every service eligible. But your
12 criticism -- one of your criticisms is that Georgia
13 is not providing -- whatever Georgia is, we won't
14 argue that point on this question. That Georgia is
15 not providing sufficient services to students in
16 schools to avoid them receiving services in GNETS.
17 Is that fair?

18 MS. TUCKER: Object to form.

19 THE WITNESS: I'm specifically, as far as
20 my report, which is what you just said not to do, but
21 I am doing, talking about the State Department of
22 Education.

1 BY MR. BELINFANTE:

2 Q. Okay.

3 A. In Georgia, GaDOE.

4 Q. Okay.

5 A. That's what I'm referencing.

6 Q. So you're -- and sorry to interrupt.

7 A. All of my stuff is GaDOE.

8 Q. No DCH Community --

9 A. That's correct.

10 Q. No Department of Behavioral Health.

11 A. I'm talking about GaDOE.

12 Q. Got it, okay.

13 A. That's my expertise. That's where the
14 state education agency is, the scope of my review, in
15 this case.

16 Q. Got it.

17 A. So we start there.

18 Q. So we start there. Okay. What is your
19 understanding of the supports and services that the
20 Georgia Department of Education provides to students
21 with emotional/behavioral disabilities in general
22 zoned schools?

1 A. As I referenced earlier today, as a
2 general rule, students with disabilities should be
3 afforded the same opportunities that their
4 non-disabled peers have, to include things such as
5 appropriate and effective teaching and learning
6 aligned with standards, to include effective content
7 mapping and lesson planning for learning content,
8 effective, appropriate typical social, emotional
9 learning strategies and supports, among other
10 evidence-based practices and effective practices
11 commonplace in schooling today.

12 Q. Okay.

13 A. This is not the Cadillac, this is
14 commonplace.

15 Q. Can you turn to page 8 of your report?
16 I'll do what I should have done a long time ago,
17 which is actually point to your report.

18 A. What?

19 Q. I'm doing what you told me to do a long
20 time ago, which is point to your report.

21 A. That helps.

22 Q. Yeah, so my question is going to be about

1 service provision separation, question number 6 -- or
2 criteria number 6.

3 A. On page 8?

4 Q. Yes. This is what I'm asking about. "Do
5 certain groups of students in the GNETS program
6 access different support services personnel" --
7 sorry.

8 A. You're good.

9 Q. "-- access different support services
10 personnel than their peers, either with or without
11 IEPs (e.g., speech, physical therapy, occupational
12 therapy, counseling, or other mental health supports
13 available within the general education setting)."

14 All right. So my question is, of those
15 services identified, what is your understanding of
16 the Georgia Department of Education's role in
17 providing or contracting for those services?

18 A. You're asking about the speech, physical
19 therapy part of this question?

20 Q. I'm asking all of the services you
21 identify in 6. It's more of a theoretical than a
22 specific. Like, of these services --

1 A. So theoretically --

2 Q. -- support services -- of support
3 services, which ones are provided by the Georgia
4 Department of Education or persons with whom the
5 Georgia Department of Education contracts with?

6 MS. TUCKER: Object to form.

7 THE WITNESS: I'm trying to figure out how
8 to answer the question. Can you ask it in another
9 way?

10 BY MR. BELINFANTE:

11 Q. I'm trying to go back to your conclusion
12 that the State Department of Education perpetuates
13 GNETS in its current form or perpetuates an idea
14 about students with emotional and behavioral
15 disabilities. And so what I'm trying to determine
16 is, you've identified that there are certain services
17 -- support services that some students need to avoid
18 unnecessary segregation.

19 My question is, of those support services,
20 what is your understanding about what the Georgia
21 Department of Education does, in terms of providing
22 those or contracting with providers to provide them,

1 which you can probably guess where I'm going, as
2 opposed to what an LEA does in determining what
3 support services are available in that school?

4 MS. TUCKER: Object to form.

5 THE WITNESS: Yeah, I'm not trying to
6 exhaust you. And this is complicated. And so the
7 first part of the idea that you mentioned, I don't
8 know that I agree with what you said there. I'm just
9 really listening to the questions intently. And this
10 is my profession. And so I'm hung up on the details.

11 And I think what you're asking is, does
12 the state provide these services? And essentially,
13 what you've done is you've turned to page 8, where
14 there's a list of services, and said, does the state
15 provide these?

16 And this is in a table that talks about
17 service provision as an important mechanism in
18 providing supports to students with disabilities.
19 And so any state in their effort to support students
20 with disabilities would be likely to offer avenues to
21 speech, physical therapy, occupational therapy,
22 counseling, and other mental health supports

1 available. That is common in a continuum of services
2 for students with disabilities.

3 BY MR. BELINFANTE:

4 Q. Is it your opinion, as reflected in this
5 report, that the state is not providing a sufficient
6 number of support services as identified in number 6
7 on page 8?

8 A. My opinion is that the State Department
9 is -- the State Department of Education in Georgia is
10 unnecessarily segregating students en masse, and
11 providing unfair and unequal educational
12 opportunities. And the state is perpetuating a
13 system that does not -- that's unnecessary, nor does
14 it justify the services that it purports to provide.

15 Q. Is it your professional opinion that the
16 State of Georgia Department of Education provides an
17 insufficient number of support services to students
18 with behavioral and educational disabilities?

19 A. Are you reading something?

20 Q. Support services, but that's it.

21 A. You're reading number 6 with -- you just
22 inserted "State Department"?

1 Q. No, I just pulled the phrase support
2 services. My question is, is it your opinion, as
3 reflected in your report, that the State of Georgia
4 Department of Education provides an insufficient
5 number of support services, an insufficient quantity
6 of support services to students who are receiving --
7 to students with emotional or behavioral
8 disabilities?

9 A. That is not reflected in my report.

10 Q. Okay. Is it your professional opinion
11 that the State of Georgia is providing insufficient
12 quality of support services to students with
13 emotional and behavioral disabilities?

14 A. In my professional opinion, the State
15 Department is supporting a program that is neither
16 fair nor equal to students without disabilities, nor
17 appropriate for students with disabilities who have
18 behavior-related needs.

19 Q. Is the State Department of Education
20 providing insufficient quality, in terms of the
21 support services that are provided to students with
22 emotional or behavioral disabilities?

1 A. Insomuch as it's utilizing -- as it
2 relates to the GNETS program, yes.

3 Q. My question, though, is about -- okay, so
4 do you have an opinion about support services being
5 offered in general zoned schools?

6 A. For students with disabilities?

7 Q. Yes.

8 A. That are outside the GNETS program?

9 Q. Yes.

10 A. No.

11 Q. Can you --

12 A. Let me clarify that a little. Actually,
13 that's not the case. Because I toured and observed a
14 number of general education schools that had programs
15 for students with disabilities who were not in GNETS,
16 I was able to see and observe students participating
17 in supports and services that were vastly different
18 than students in the GNETS program.

19 For example, in one site, I saw students
20 receiving speech therapy services in their general
21 education environment. In another example, I saw
22 students receiving mental health supports and

1 services in the -- in the general education
2 environment.

3 And those same supports and services were
4 not being provided in the GNETS program that was in
5 closest proximity to that general education
6 environment.

7 Q. What is your understanding of what the
8 Georgia Department of Education affirmatively did to
9 cause that differential in service between the
10 general zoned school and the GNETS program?

11 A. What did the State Department of Education
12 in Georgia do to perpetuate the differences in
13 services between Gen Ed and -- Gen Ed and students
14 with disabilities.

15 Q. I'm talking about the specific example you
16 gave, where a student received speech therapy and
17 another student received mental health services in a
18 general education school, but not in the GNETS
19 program. What did the Georgia Department of
20 Education do to cause that distinction?

21 A. The Georgia State Department of Education,
22 from my perspective, failed to provide guidance for

1 implementation of a full array of supports for
2 students with behavior-related disabilities,
3 including policy and technical assistance for
4 districts and schools, or for districts and the GNETS
5 program within those.

6 The state failed to provide effective
7 social, emotional, and behavior supports,
8 professional learning, technical assistance,
9 guidance, and vision for students in the GNETS
10 program.

11 The state failed to provide guidance,
12 vision, policy, technical support for the GNETS
13 program, in which learning was assigned with state
14 standards and alternate assessment standards for
15 students with behavior-related disabilities.

16 Therefore, students in the GNETS program
17 have less opportunities for academic engagement, and
18 less opportunities for effective social, emotional,
19 behavioral, and mental health supports, and less
20 opportunities to have educators that are certified or
21 have experience, expertise, or understanding of what
22 it means to support students with behavior-related

1 disabilities.

2 In my opinion, the State Department of
3 Education for Georgia failed to provide a coherent
4 system of social, emotional, and behavioral, mental
5 health supports for students who are currently
6 receiving services, and who have received services
7 over the last many years regarding effective common
8 educational practices and services.

9 And then lastly, the state failed to
10 provide leadership, teaching recommendations,
11 professional support, learning and understanding to
12 educators in the GNETS program on how to be effective
13 at supporting the students who have had the most
14 significant and complex needs.

15 Q. Does that complete your answer?

16 A. For now, among other things.

17 Q. Do you need -- is there more?

18 A. Yeah, there's more.

19 Q. Okay, keep going.

20 A. No, that's all right. I'll stop for now.

21 Q. Well, I'm trying to understand your --
22 what the Georgia Department of Education did.

1 A. I just listed a lot. Do you want more?

2 Q. Right. Well, I mean, I'm trying to
3 understand the breadth of your opinion.

4 A. Okay.

5 Q. If you're going to read the report, then
6 we can move on. But let me ask this, then.

7 A. Well, I don't need to read the report, but
8 I can talk about each of those recommendations
9 underneath. There's a variety of strategies and
10 steps that I recommend for the State Department to do
11 in order to change, you know, what's occurring right
12 now.

13 Q. We'll get to that, I promise.

14 A. Okay.

15 Q. If we don't, it's on me.

16 A. All right. Fair enough.

17 Q. One of the things you just said is that
18 the state is not providing effective social,
19 behavioral, or emotional supports. Did I hear you
20 correctly on that?

21 A. To students within the GNETS program.

22 Q. Do you know what it -- what would it cost

1 to provide what you're deeming effective social,
2 behavior, and emotional supports in Georgia to those
3 students?

4 A. It would cost no more than what's already
5 being funded within the state.

6 Q. And what is the basis of that opinion,
7 your experience in other states; is that correct?

8 A. My experience in implementation of social,
9 emotional, and behavior support for students across
10 the U.S.

11 Q. Would you agree with me that rates of
12 service provision vary across states?

13 A. Yes.

14 Q. And when we talk about effective -- last
15 question, and then we'll do that, because that's a
16 great idea.

17 When we talk about effective social
18 behavior, and emotional supports, those are -- what
19 we're talking about are actual services, correct?
20 Something that a student receives, whether it's in
21 the form of therapy or counseling, or whatnot. We
22 are talking about actual services, right?

1 MS. TUCKER: Object to form.

2 THE WITNESS: No, we're talking about,
3 again -- and this is a broad concept, so a continuum
4 of support. And that can mean, for example,
5 proactive teaching of -- for one example, proactive
6 teaching of school-wide expectations. That's a
7 behavioral strategy applied to a number of students.

8 It's -- there might be small group
9 instruction that occurs within the course of a
10 typical school day. There may be restorative
11 circles. There may be peer-to-peer instruction.
12 There may be a varied and wide ranging mechanism by
13 which services and supports are provided to students
14 within the system of schooling.

15 BY MR. BELINFANTE:

16 Q. Okay. So at least included within that
17 could be some of the supports, as I described it --

18 A. Certainly.

19 Q. -- where we have to contract with a
20 professional provider to provide therapy or speech
21 counseling, et cetera.

22 A. I answered your question before you

1 finished it, so I'm sorry about that. And it is not
2 certainly, because the contracting part. Some
3 schools and agencies provide those types of supports
4 with educators that are hired within the system.

5 Q. Okay. I think we're saying the same
6 thing. And a bathroom break is --

7 A. A bathroom break is a good idea, but I
8 don't know if we're saying the same thing. But a
9 bathroom is a good idea.

10 THE VIDEOGRAPHER: Off the record at
11 14:08.

12 (Recess.)

13 THE VIDEOGRAPHER: On the record at 14:34.

14 BY MR. BELINFANTE:

15 Q. All right. Dr. McCart, I would you to
16 turn -- I promised you we'd get there -- to page 163.
17 I'm going to ask a series of questions about the
18 recommended actions in your report.

19 My first question, actually, though, I
20 should have said go to page 162. You have two
21 recommendations for the State of Georgia there in
22 bold. And am I understanding correctly that your

1 opinion is to achieve these two recommendations, the
2 State Department of Education would implement the
3 recommended actions on page 163 to 167?

4 A. I think it's broader than that. The first
5 eliminates statewide systemic segregation. The
6 second being to provide fair and equal access to
7 educational opportunities are the overarching
8 recommendations in the report. Some ways in which
9 you could achieve that are included in the actions --
10 the five actions that you see after that.

11 Q. Okay. One of the things I did not see in
12 the recommended actions was to defund or stop sending
13 -- or stop the GNETS grants program. In your --
14 based on your report, what would be the role for the
15 GNETS grants to achieve the goals you set forth on
16 page 162?

17 A. The role of the GNETS grants -- are you
18 getting at, how might -- what are you getting at?

19 Q. Yeah, I mean, if right now the Georgia
20 General Assembly appropriates approximately -- I'll
21 use the number in your report, 60 million for a GNETS
22 grants program. In order to achieve the goals you

1 describe on page 162, would they continue to fund the
2 GNETS grants program or would the GNETS grant program
3 and the GNETS program go away?

4 A. I make no recommendation about funding
5 regarding the GNETS program. That is really between
6 the state and entities involved at the state. I
7 provide recommendations in how the state might go
8 about implementing a system of support that is not
9 segregated, and provides fair and equal access to
10 educational opportunities.

11 Q. Is it possible that the state achieve the
12 goals you articulate on page 162 in bold, while at
13 the same time there are separate, freestanding GNETS
14 facilities in existence?

15 A. You're saying, is it possible to achieve
16 goal 1 and 2, and have separate, freestanding GNETS
17 center-based --

18 Q. Yes.

19 A. The current GNETS center-based facilities
20 do not provide fair and equal access to educational
21 opportunities, nor -- and they are segregated. So
22 it's really related to both.

1 Q. I see one -- and tell me if I'm wrong. I
2 see the providing fair and equal access to
3 educational opportunities is almost more qualitative;
4 that the services -- the criticisms you have of the
5 GNETS program are the services being provided there
6 are not effective, among other things.

7 What I guess I'm really trying to get to
8 is, is it possible to eliminate systemic segregation
9 and still have schools that provide education for
10 emotionally/behavior disabled students in a separate,
11 freestanding environment?

12 MS. TUCKER: Object to form.

13 THE WITNESS: Yeah, I'm not accepting the
14 premise of what you just said. Is it possible to
15 have a segregated program for students with
16 behavior-related disabilities, and still not have
17 statewide systemic segregation, and have fair and
18 equal access? Yes, as long as it is related
19 specifically to effective learning environments that
20 are matched to student need that are in line with
21 practices that are common in the field now.

22 BY MR. BELINFANTE:

1 Q. Let's look at recommendation action --

2 I'll call it 1. It's the one on page 163. It says
3 that -- it looks like the third sentence, "Georgia
4 DOE should invest in local capacity through regional
5 and district structures in support of MTSS
6 implementation."

7 Do you see that?

8 A. Yes.

9 Q. What did you mean by invest in local
10 capacity?

11 A. In order to effectively support any
12 student, you need state capacity and LEA capacity,
13 school capacity. And that relies on a number of
14 variables, including teaching expertise, policy
15 implementation, among other things.

16 Q. Do you --

17 A. The GaDOE in the recommendations should
18 build their capacity, in order to be able to build
19 local capacity in support of students with
20 behavior-related disabilities.

21 Q. Does that mean hire more individuals? Is
22 that how you would build the capacity?

1 A. No.

2 Q. Okay. You could train the existing
3 individuals?

4 A. Yes.

5 Q. Is it --

6 A. I don't know what individuals you're
7 talking about, but theoretically, can you train
8 people to be more effective educators? Certainly.

9 Q. Is it your opinion that the Department of
10 Education has sufficient staff to implement your
11 recommended actions identified on pages 163 to 167 of
12 your report?

13 A. Having worked with a number of state
14 Departments of Education, the answer is, yes, because
15 there's a reliance on systems that are established
16 already at the State Department to be able to
17 implement these recommendations. That decision lies
18 within the State Department itself, how to do so.

19 Q. Your first recommended action is to
20 "Develop state capacity to provide guidance for
21 implementation of MTSS through direction, policy, and
22 technical assistance for districts and schools

1 throughout the state."

2 Can you describe for me the difference
3 between MTSS and PBIS, and how the two fit together,
4 if they do?

5 A. Mm-hmm. One place to find that is in the
6 definitions.

7 Q. Right.

8 A. So if we look on page 6, you'll see that
9 MTSS "is a framework with a tiered infrastructure
10 that uses data to help match academic and
11 social-emotional behavior assessment and instruction
12 resources to each and every student's needs. In this
13 tiered, data-informed framework, educators work to
14 ensure that the majority of students respond to core
15 instruction. Students who need additional support
16 for enrichment or remediation are identified by the
17 data and provided that support with measured focused
18 intensity."

19 Right below that, you see the definition
20 of PBIS, which is an evidence-based, tiered system of
21 report -- I'm sorry, "tiered system supporting
22 students' behavioral, academic, social, emotional,

1 and mental health. When implemented with fidelity,
2 PBIS improves social, emotional competence, academic
3 success, and school climate. It also improves
4 teacher health and well-being."

5 That's the technical definitions of MTSS
6 and PBIS. In reality, PBIS is the behavioral aspect
7 of a tiered system of support available in the
8 school, also connected to social, emotional learning
9 and mental health.

10 In the past, the terminology around MTSS
11 has been related to academic core content, and has in
12 recent years, expanded to encompass PBIS, restorative
13 practice, and a multitude of other evidence-based
14 practices within tiers of support.

15 That's why sometimes you'll hear me say
16 MTSS, meaning multi-tiered system of support, but
17 I'll also say a system of support. It's really the
18 same thing. What is the system by which we, in the
19 education system, are delivering our educational
20 supports and resources to students.

21 Q. All right. You said, in recent years,
22 MTSS has expanded from focusing on academic core

1 content to their content, behavioral, social, et
2 cetera. Can you put a finer point on that, like, the
3 last five years, ten years, eight years?

4 A. A long history to MTSS regarding when the
5 emergence of strategies entered in at various levels.
6 In terms of year, I can't recall, sitting here right
7 now, but it's been well more than ten years.

8 Q. Okay. Has it been -- do you know if MTSS
9 was expanded prior to 1990 in the way you talk about,
10 or would it be after 1990 when folks started looking
11 at it more broadly?

12 A. I do not recall, off the top of my head.

13 Q. Okay. Is it fair to say that you and
14 Dr. Sailor and other folks at SWIFT have been on the
15 vanguard of expanding MTSS into these other areas?

16 A. Speaking for myself, and not Dr. Sailor
17 and not for all the people at the SWIFT Education
18 Center.

19 Q. That's fair.

20 A. Certainly I have been an important
21 mechanism in implementation of tiered systems of
22 support across school districts in the United States,

1 as have -- as has been one of the missions of the
2 SWIFT Education Center.

3 Q. And that's part of the \$24.5 million grant
4 that it received from the United States Department of
5 Education Office of Special Education, was to do
6 that, expand implementation of MTSS; is that right?

7 A. The \$24.5 million grant that was received
8 from the United States Department of Education Office
9 of Special Education in 2012 was about providing
10 effective services for students with disabilities who
11 had -- were receiving -- who -- for students who had
12 disabilities. Leave it there.

13 Q. And --

14 A. One strategy -- one strategy that we
15 employed, among many others, was the implementation
16 of a tiered system of support.

17 Q. Okay. If the state -- well, let me ask
18 this. Are there metrics to determine whether the
19 state has -- let me back up even further.

20 If the state were to adopt your
21 recommendation -- recommended action on page 163, the
22 first one, are there metrics to determine whether it

1 has complied with your recommended action? And if
2 so, what are those metrics?

3 MS. TUCKER: Object to form.

4 THE WITNESS: I've found in my
5 professional experience -- and again, this is
6 probably a distinction between our businesses -- that
7 compliance is not what we focus on. We focus -- I
8 focus on the development of state capacity, in order
9 to implement effective strategies for what they want
10 to do.

11 Now, if you're asking, is there a specific
12 tool in which states can assess whether or not they
13 feel they are making progress on their desired goals
14 and outcomes, there are.

15 BY MR. BELINFANTE:

16 Q. How would -- bear with me in this
17 hypothetical for a moment.

18 A. Okay.

19 Q. But if you're asked to make a
20 determination whether because someone's appointed you
21 a court monitor, or a consultant for the state, or
22 for the DOJ, how would you -- what tool would you use

1 to determine whether or not -- because, again, I'm
2 asking from the perspective of the state. If the
3 state were to say, we want to do this, this makes
4 sense. How does the state know when it has
5 successfully adopted recommended action 1?

6 A. Recommended action 1, theoretically, a
7 state would decide, based on the information that
8 they have before them, what is the direction and
9 vision for where we want to go with this work? And
10 they may say, we want to implement a tiered system
11 within our state, or we already have a tiered system
12 within our state. We want to beef it up, we want to
13 do more, we want to allow more student access.
14 Whatever that is.

15 That is built into an initial guiding
16 document that the state develops and drafts, that
17 then becomes a vision for how that work is carried
18 out within the state through a state implementation
19 team. And then a state -- I'll just leave it at
20 state implementation team for now.

21 Q. Okay. When you write on page 163, the
22 last paragraph -- not full paragraph, beginning with

1 "Georgia DOE should disseminate."

2 A. Mm-hmm.

3 Q. "Georgia DOE should disseminate inclusive
4 policy structures and practices for the purpose of
5 building strong relationships furthering equity-based
6 inclusive education."

7 Now, probably as an occupational hazard, I
8 see a bunch of words in there that I can't readily
9 define. So from a standpoint of where could a state
10 look for a model to do that, that you would opine
11 would satisfy kind of recommended action 1?

12 A. There are a number of -- let me think a
13 second more.

14 Q. Mm-hmm.

15 A. I can talk about what are common
16 indicators of inclusive policy structures and
17 practices that are commonplace in the field that
18 could be adopted, were the State Department
19 interested in providing more inclusive services,
20 along with a full continuum of support for students
21 with behavior-related disabilities.

22 And those kinds of things would be

1 non-categorical service delivery, a full array of
2 service options -- service and support options for
3 students with behavior-related disabilities that do
4 not require placement in a separate, segregated
5 facility in order to receive those services.

6 It would be the utilization of general and
7 specialized educators in support of having received
8 training from the State Department of Education
9 around how to provide effective teaching and learning
10 processes for students with behavior-related
11 disabilities across a continuum of support, among
12 others. I'll stop there for now.

13 Q. In terms of non-categorical service
14 delivery, can you tell me what you mean by that?

15 A. Yeah, I referenced it a bit in the report,
16 in finding 2, on page -- I'm close. Oh, my goodness,
17 I'm sorry.

18 Q. No, take your time.

19 A. It's because everybody's watching.

20 I'm pretty sure I'm close. Could I have
21 one more minute?

22 Q. Sure.

1 A. And then I'll give up.

2 Okay, page 36. I feel a sense of
3 accomplishment. Am I done? Before I read that, let
4 me know what you think.

5 Q. Well, you can see the amount of ink I
6 dedicated.

7 A. Yeah, I saw that. I'm very impressed for
8 some reason.

9 Okay. So when you talk about non- --
10 you're referencing the question I asked about
11 categorical service delivery.

12 Q. Correct.

13 A. And in general, this -- these few
14 paragraphs reference what happens when medical
15 diagnoses are used as a mechanism for providing --
16 for providing academic or behavioral supports. And
17 I'll just read a little bit, and you can stop me
18 whenever, but "In order to qualify for special
19 education, a student must have a diagnosis from a
20 licensed psychologist or medical doctor."

21 Q. Right.

22 A. "This diagnosis provides educators with

1 some sense of the characteristics a student with that
2 diagnosis might present. For example, a student with
3 autism may have difficulty with social interactions,"
4 et cetera. "A student with Tourette's Syndrome may
5 have uncontrolled vocalizations," et cetera.

6 The provision of -- if you read further
7 down, "Students with disabilities, just like their
8 general education counterparts, need the full array
9 of educational supports and services to be
10 successful. Students with behavior-related
11 disabilities need universal screening, progress
12 learning, effective supports."

13 So to provide a system of services that
14 are categorical, meaning you have this disability, so
15 you should have this, is categorical thinking. And
16 the recommendation is that you understand the full
17 array of student need within your state, and you
18 provide a continuum of support across that student
19 need, rather than relying on a categorical label for
20 defining.

21 Q. Got it. Okay. And I think I recall, and
22 I may be mixing it up with some of the other stuff I

1 read, but I think one of the articles you cited talks
2 about this division within academia between those who
3 approach this issue from a medical perspective, i.e.
4 you have autism, here's the range of supports. And
5 those -- I forget the phrase used, or the term you
6 used to approach it. I think you said
7 non-categorically, and they used a different one.

8 A. Mm-hmm.

9 Q. Is that accurate, that there is a kind of
10 split within the profession on how to approach these
11 issues?

12 A. I think it would be more of an evolution
13 over time, that a long time ago, back in the '50s,
14 '60s, '70s, providing services based on a medical
15 diagnosis would be more commonplace than what you see
16 today.

17 Q. Okay. That looks like Lanterman's article
18 on moving the needle. Is it your opinion, then, that
19 disability is a construct?

20 A. Is it my opinion that disability is a
21 construct?

22 Q. Mm-hmm.

1 A. What do you mean by construct?

2 Q. I mean, would you agree with this
3 statement which, "Disability is a construct that is
4 interpreted through many conceptual models"? Or do
5 you need more context to answer that?

6 A. For sure.

7 Q. Okay.

8 A. You knew that was coming.

9 Q. I did once you agreed to the first part.
10 We'll go back to the recommendations on 163.

11 In terms of MTSS as you recommended, as I
12 understand it, the state develops the capacity to
13 provide training, but MTSS itself, the multi-tiered
14 system, is actually implemented at the school level;
15 is that correct?

16 A. It's implemented across the entire
17 educational system. So it's sometimes called whole
18 system engagement, at other times, it's called
19 cascading levels of influence. It's about how do you
20 structure an educational system, such that it's
21 providing for students what they need? And --

22 Q. Okay.

1 A. -- that reaches the whole system.

2 Q. Okay. Is it fair to say that -- well, how
3 long do you think it would take the state to develop
4 state capacity to provide guidance for implementation
5 of MTSS through direction, policy, and technical
6 assistance for districts and schools throughout the
7 state?

8 A. It would depend on what they already had
9 in place regarding their systems of support for
10 students already, who are in the general education
11 system.

12 Q. Do you have an opinion on what supports
13 are in place for students in the general education
14 system in Georgia?

15 A. Yes.

16 Q. Okay. So given that understanding, how
17 long do you think it would take the State Department
18 of Education to implement recommended action number
19 1?

20 A. As a general rule, when states begin
21 implementation of an effort to refine or adjust their
22 system of support, there is usually an investment of

1 approximately a year in understanding the vision,
2 direction, and desired destination of the State
3 Department, and how it would lead.

4 And then second to that -- so that first
5 year is really about that. The second year is really
6 focused more on what is it that we have within the
7 state -- we call it resource mapping. What do we
8 have within the state already that could help with
9 the implementation of a system that does not
10 unnecessarily segregate students or provide unfair,
11 unequal educational opportunities. So that typically
12 happens in the second year.

13 The third year is really laying out a
14 pathway for how the state provides vision, guidance,
15 direction, and professional learning, and actually
16 begins implementing a system in which things are
17 different.

18 Q. What if a school -- what if the State
19 Department of Education develops the capacity to
20 provide this training, et cetera, but an LEA says, we
21 don't want to do it. Do you have an opinion on what
22 the state could do at that point? And by state, I

1 mean the State Department of Education in Georgia.

2 A. If an LEA says, we don't want to provide a
3 system of support that includes students with
4 disabilities?

5 Q. No, if the State Department of Education
6 adopts an MTSS strategy that you would say is to
7 fidelity, and says, we're going to provide training
8 to you, LEAs, you know, on how to do that. And an
9 LEA says, we think we've got it covered, we're not
10 interested. Not because of any animus toward
11 disabled students, but just they have a different
12 vision, let's say. What is your understanding of
13 what the Georgia Department of Education could do in
14 that circumstance?

15 A. It is not uncommon within states to have
16 LEAs to -- deeply consider what direction the State
17 Department is putting forth. Part of building the
18 state capacity around implementation of an effective
19 system of support that meets the needs of students
20 currently in the GNETS program is to provide training
21 to the State Department, in order to be able to know
22 how to work with LEAs who may have concerns or a

1 different vision, and help supporting them. That's
2 the technical assistance part of this work. So I was
3 talking about the years. That would be part of the
4 year 3 --

5 Q. Okay.

6 A. -- effort.

7 Q. Would adopting an MTSS approach, like you
8 suggest in recommended action 1, require the Georgia
9 Department of Education to adopt a particular
10 school-based curriculum?

11 A. No. And I want to clarify, because I used
12 the phrase MTSS, because that is what is used in a
13 number of places, that whether or not it's called
14 MTSS is not important. It is a coherent, full system
15 of support. A way in which services are delivered
16 throughout the state.

17 Q. Okay. Let's look at recommended -- what
18 I'll refer to, just because I'm doing it
19 chronologically, as recommended action number 2, page
20 164. "Develop state capacity to serve as technical
21 support for district implementation of social,
22 emotional, behavioral, and mental health practices

1 with MTSS."

2 What would constitute technical support
3 for district implementation?

4 A. Most states see their role as providing a
5 level of vision, guidance, and technical support or
6 technical assistance, meaning expertise or guidance
7 on how to implement current effective educational
8 practices. In this particular case, it would be
9 that, and it would also apply, then, to students
10 currently in the GNETS program and their educators.

11 Q. Okay.

12 A. Teachers or staff.

13 Q. And how would a third party measure the
14 efficacy of the state's efforts in providing
15 technical support to districts?

16 A. There's a number of tools that offer
17 feedback and support to states on setting up systems
18 of coaching across the state, systems of technical
19 assistance and support, professional learning across
20 the state. If the state were interested in this,
21 there would be a variety of options for how that
22 might occur.

1 Q. So is it fair to say, there is not one
2 measure of efficacy in looking at how the technical
3 support is being prepared and provided?

4 A. At the State Department?

5 Q. Yes.

6 A. There are a number.

7 Q. Okay. Neither recommended action 1 nor
8 recommended action 2, if implemented, would
9 immediately remove a student from the GNETS program,
10 correct?

11 A. That's a difficult question, because,
12 again, the actions you see noted on page 163 are
13 directly tied to the broader recommendations on page
14 162 that talk about eliminating the statewide system
15 of segregation of students with behavior-related
16 disabilities in the GNETS program, and providing fair
17 and equal access to educational opportunities for
18 students with behavior-related disabilities.

19 If the state were to engage in action 1 or
20 2, there may be more immediate opportunities for
21 students who are unnecessarily placed in a systemic
22 system of segregation to have access to fair and

1 equal educational opportunities that are matched to
2 their need.

3 Q. I mean, I guess my question is, a lot of
4 the report, a bulk of the report certainly goes to
5 and provides criticisms of the GNETS program. And
6 frankly, as I was reading it, I was expected when I
7 got to the recommended action to be, do something in
8 the GNETS program, right? Evaluate students,
9 something. And what we have is an adoption of MTSS
10 at the Georgia DOE level and provide expertise there.

11 So my question is, did any of the
12 recommended actions call for, you know, an immediate
13 evaluation of students in the GNETS program by the
14 Georgia Department of Education?

15 MS. TUCKER: Object to form.

16 THE WITNESS: I've done a comprehensive
17 evaluation of the GNETS program right here. And
18 based on that evaluation, what I think would help to
19 make the situation better for the students that I
20 observed are the recommended actions that you see
21 here.

22 BY MR. BELINFANTE:

1 Q. Would you agree with me that -- and I'm
2 not criticizing the proposed efficacy of these
3 programs. But the recommended actions you're talking
4 about do take -- I think we talked about at least one
5 to three years to fully implement; is that right?

6 A. Or longer.

7 Q. Or longer.

8 A. Mm-hmm.

9 Q. Let's look at the recommended action --
10 the second one, because I think I understand the
11 first -- sorry, let me get you to a page number. I
12 skipped one, sorry.

13 A. No problem.

14 Q. 164, the second one there. "Develop state
15 capacity to serve as technical support for
16 district-focused learning aligned with high
17 expectations and standards-based" --

18 A. That's the third.

19 Q. -- "learning for students."

20 Does the IEP team consider whether a
21 student is learning at the level of the
22 standard-based learning of that grade or year?

1 A. Mm-hmm.

2 MS. TUCKER: I'm going to just object to
3 form. And also, it's "students with behavior-related
4 disabilities." Sorry.

5 MR. BELINFANTE: No, no.

6 MS. TUCKER: Just correcting for the
7 record.

8 MR. BELINFANTE: No, you need to.

9 MS. TUCKER: Yeah.

10 MR. BELINFANTE: And I need to learn to
11 read better.

12 THE WITNESS: And we're talking about the
13 recommended action that starts with, "Develop state
14 capacity to serve as technical support for
15 district-focused learning aligned with high
16 expectations and standards-based learning"?

17 BY MR. BELINFANTE:

18 Q. Yes.

19 A. And "for students with behavior-related
20 disabilities."

21 And your question is, if I'm
22 understanding, is there -- does an IEP team ever

1 consider whether or not students are performing
2 related to standards?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. And do they make their
6 recommendations in order to -- with the goal in mind,
7 that the student will perform on standard-based
8 learning? In other words, what is the IEP team
9 trying to solve for that student, as it relates to
10 the standards that you're discussing on page 164 and
11 165?

12 A. Again, I'll speak hypothetically here,
13 because that's what we're talking about --

14 Q. Sure.

15 A. -- is, would you hope that an IEP team
16 would be helping students to learn the ways in which
17 general education students learn aligned with state
18 standards, or alternate state standards for students
19 with disabilities? Yes.

20 Q. Okay. And in your experience, having
21 served on an IEP team, and also just your experience
22 generally, if an IEP team fails to do that, are there

1 potential legal consequences that you're aware of for
2 that IEP team or that district?

3 MS. TUCKER: Object to form.

4 THE WITNESS: I don't know what legal
5 actions apply.

6 BY MR. BELINFANTE:

7 Q. Okay. In that same paragraph, page 164,
8 you talk about, midway through, "Georgia DOE can also
9 serve as a source of technical support, providing
10 professional learning and resources on how to employ
11 effective and current universal screening and analyze
12 progress monitoring data for students."

13 Do you see that?

14 A. I sure do.

15 Q. Okay. Did you review data collected by
16 the Georgia Department of Education as part of your
17 report in this case?

18 A. Yes, extensively.

19 Q. Do you have an opinion as to whether the
20 Georgia Department of Education collects sufficient
21 data in order to provide effective supports or to --
22 let me start over.

1 A. Sure.

2 Q. Did you form an opinion as to whether the
3 Georgia Department of Education collects sufficient
4 data to allow LEAs and RESAs to provide sufficient
5 reports -- supports, not reports -- to students with
6 emotional and behavioral disabilities?

7 A. I sincerely do not want to ask you to
8 repeat that question.

9 Q. Let me ask it in a really simple way. And
10 then if we can go from there.

11 A. There we go.

12 Q. What I'm trying to determine is, is there
13 more data -- is it your opinion that Georgia
14 Department of Education should be collecting more
15 data than it is currently collecting?

16 A. I have reviewed a lot of data from the
17 Georgia Department of Education, but I have not
18 reviewed all the data. Therefore, I cannot answer
19 that question.

20 Q. All right. And in order to determine
21 whether the local school districts are employing
22 effective and current universal screening, what

1 specific data should the Georgia Department of
2 Education be collecting?

3 A. It is common in education for educational
4 systems to understand and utilize universal screeners
5 and progress monitoring data in a variety of
6 different forms. It's -- for lack of a better way of
7 saying it right now, it's a lot of data on how to
8 determine student progress.

9 Q. And sitting here today, because you
10 haven't looked at the full universe of data, you
11 can't decide if the Georgia Department of Education
12 is collecting sufficient data to do that. Did I
13 understand that from earlier?

14 A. Correct.

15 Q. Is there a place that the Georgia
16 Department of Education could look to, to determine
17 what is the appropriate criteria of data that it
18 should be examining in order to implement your
19 recommended action number 3?

20 A. Yes, but not to conflate that with
21 progress monitoring and universal screening data,
22 which is related to student progress.

1 Q. Okay.

2 A. There are certainly mechanisms, and the
3 state does already collect these, regarding
4 assessments and alternate assessment outcome data,
5 which is related to recommendation number 3.

6 Q. Okay. I think I understand. Let's go to
7 recommended action number 4 on page 165. Let's see.

8 In the section under the bold, you list
9 five recommended actions.

10 A. Mm-hmm.

11 Q. One is "effective and clear data use."
12 That's letter (c).

13 A. Mm-hmm.

14 Q. Is there -- how would one measure the
15 efficacy of their data use in this context?

16 A. You might remember, or you might not, a
17 little bit ago, I discussed this process of whole
18 system engagement, where I talked about a design or
19 vision for MTSS, or a system of support at the state.
20 And then talked about how the district and the system
21 would work together.

22 That's the second one around state,

1 district, school teaming coaching structures.
2 Effective use of data across those systems. And then
3 establishment of priorities. And you remember, I
4 might have mentioned resource -- or I did mention
5 resource mapping and matching earlier.

6 Effective use of data, as indicated, is
7 part of a whole system. There are a number of tools
8 that talk about how to either make data informed
9 decisions or data-based decisions or evidence-based
10 decisions. And how to use data in a timely fashion,
11 where you have -- you don't have too much or you
12 don't have too little, so that you can make decisions
13 not only about individual student progress, but
14 progress of schools, progress of LEAs, and progress
15 of the state in their capacity to be able to
16 effectively utilize data.

17 Q. Okay. In the bold section up there, it
18 says, "Develop state capacity to serve as technical
19 support for district-scaling of evidence-based
20 implementation actions to support equity-based MTSS
21 with embedded social, emotional, behavioral, and
22 mental health."

1 What did you mean by embedded in that
2 context?

3 A. What I mentioned earlier about how MTSS,
4 PBIS, and social, emotional learning are a subset of
5 a broader umbrella called the MTSS, or system of
6 support.

7 Q. Okay. All right. Let's go to the next
8 recommended action, page 165, "Develop state capacity
9 to serve as technical support for district
10 implementation of evidence-based practices to support
11 equity-based MTSS with embedded social, emotional,
12 behavioral, and mental health."

13 The first sentence under that reads,
14 "Central to effective statewide reform is a large
15 scale investment in building state, district, and
16 school leadership, and leadership teaming
17 structures."

18 Do you see that?

19 A. Mm-hmm.

20 Q. Okay. Do I take from this that you deem
21 your recommended actions to constitute a reform of
22 the Georgia Department of Education?

1 MS. TUCKER: Object to form.

2 THE WITNESS: Reform is probably -- I'm
3 not sure what to say about whether or not it is
4 reform. I mean, reform could be something very small
5 or something very large.

6 In this particular case, I am referencing
7 statewide adjustments to the GNETS program, in order
8 to reduce, eliminate -- I'm sorry, eliminate
9 unnecessary segregation and lack of access to fair
10 and equal educational opportunities.

11 BY MR. BELINFANTE:

12 Q. And that -- central to that would be
13 large-scale investment in building state, school
14 district, and school leadership teaming structures,
15 correct?

16 A. Yes.

17 Q. Okay. You saw this one coming. Can you
18 tell me what you mean by large-scale investment?

19 A. Yeah.

20 Q. And quantify that in the best way you can.

21 A. Yes. Investment, in this context, means a
22 commitment to a vision of implementation focused on

1 building capacity at the state, district, and
2 leader -- school levels around leadership and
3 leadership teaming structures.

4 This is a high leverage practice that
5 utilizes people that are already in the system, or
6 may already be in the system, to implement effective
7 strategies. And in this case, would help support
8 students in the GNETS program having different
9 options, rather than segregation.

10 Q. And is there a role for the current
11 educators providing services in GNETS classrooms to
12 do that?

13 A. My personal belief is that -- I'll say
14 this. Because of the context, a number of educators
15 struggle within the GNETS program, because of its
16 institutional, like, nature, and its segregation away
17 from general education population.

18 I think that many educators within the
19 GNETS program, if they were in an enabling context
20 that was not segregated, and were provided with
21 appropriate professional learning resources and
22 support, aligned with a vision in the state that did

1 not uphold the current system of segregation, that
2 those educators would be effective in providing
3 supports to students who are currently served in the
4 program in a different way.

5 Q. Could current -- and I think this may be
6 what you just said. But could current GNETS
7 instructors, educators, through training, provide
8 education -- an education that would satisfy your two
9 recommendations on page 162?

10 A. Certainly educators within the GNETS
11 program, if given a different context environment,
12 and appropriate professional learning and support,
13 could provide effective supports to students in
14 general education settings within the state.

15 Q. So does that mean that a person who is now
16 teaching in a GNETS classroom would be teaching in a
17 general zoned classroom?

18 A. It depends.

19 Q. Would that be required in order to satisfy
20 the two --

21 A. No.

22 Q. -- recommendations?

1 A. I'm sorry.

2 Q. Yeah, I think the answer may be the same.

3 But that would be required for the two

4 recommendations on page 162?

5 A. No.

6 Q. Okay. If you could turn to page 161, the

7 last sentence of the first paragraph, not full

8 paragraph, but the last paragraph reads, "My hope is

9 that educators within the GNETS program will embrace

10 the recommendations and see themselves as part of a

11 movement toward better support for themselves,

12 professionally, and better outcomes for students with

13 behavior-related disabilities."

14 Do you see that?

15 A. I do.

16 Q. What did you mean by a movement?

17 A. The -- all the things we've just been

18 discussing regarding providing supports and services

19 to students within -- currently served within the

20 GNETS program, to be served in a system that is not

21 segregated and provides fair and equal access to

22 those students.

1 Q. In terms of equal access, what specific
2 education services and support did you find were
3 offered, other than -- I think we talked about, in
4 one example, the speech therapy. In another example,
5 there was mental health counseling. What specific
6 services and supports did you find were offered to
7 students in general zoned schools, but not GNETS?

8 A. That is really all of finding 2.

9 Q. Okay.

10 A. Would you like to go there?

11 Q. I will. And I think I probably will in a
12 little bit longer, because I think there is a lot in
13 there that I'm not talking about. So for example,
14 I'm not talking about gymnasiums, I'm not talking
15 about the status of the air conditioning thing that I
16 saw in finding 2.

17 What I'm -- that question that I just
18 asked was more specific to things -- yes, you
19 discussed them in finding 2, but it's a narrower
20 question, if that makes sense.

21 A. Okay. So you're not talking about unfair,
22 unequal, and harmful facilities?

1 Q. I'm not.

2 A. Okay.

3 Q. I'm not. I'm talking about the services
4 and supports. But I think we probably -- we may have
5 covered that earlier today, unless --

6 A. I can look.

7 Q. Sure.

8 A. You're also not referencing the
9 distinctions between the interior of the buildings.

10 Q. No, nothing involving physical plans.

11 A. Okay. Okay, the same with conditions of
12 classrooms, then. You're not referencing that.

13 Q. No.

14 A. If it was the morning, I could say all of
15 these things off the top of my head. But right now,
16 I'm going to flip pages. Also, not the restrooms,
17 you're not referencing.

18 Q. No, nothing physical.

19 A. I gotcha.

20 Q. It's really just the -- you know, in zoned
21 schools, there was speech therapy, and in GNETS,
22 there was not. That kind of service.

1 A. Mm-hmm. In zoned or home schools, there
2 were gymnasiums. In many GNETS programs, there were
3 not, or they were inferior. The same with
4 playgrounds. The same with other outdoor common
5 spaces, for example, at high schools or middle
6 schools.

7 In zoned or home schools or general
8 education environments, there were grade level
9 appropriate resources for students in general
10 education, including those who had disabilities.
11 There were --

12 Q. I'm sorry, when you say disabilities, you
13 mean behavioral/emotional disabilities?

14 A. I mean students who receive -- who have
15 disabilities that are not in the GNETS program.

16 Q. Right. But because you corrected me on
17 this earlier. We're not talking about, like, a
18 student with a physical disability, for example,
19 like, may be confined to a wheelchair, or something,
20 versus what we've been talking about, the
21 emotional/behavioral health disability?

22 A. I was correcting how you said the word,

1 but --

2 Q. Okay.

3 A. What I'm actually talking about right now
4 is -- or how you said the words, the sequence of the
5 words.

6 Q. Okay.

7 A. But what I'm talking about here is
8 students who have disabilities, have IEPs, may have
9 behavior-related disabilities, accessing general
10 education or in the general education environment,
11 but still receiving special education services, as
12 compared to -- or as -- for purposes of this question
13 to students who are receiving services in the GNETS
14 program with behavior-related disabilities.

15 Q. Got it. Okay.

16 A. So I mentioned grade appropriate
17 resources, the standards-based content, rather than
18 child-like -- young child preschool-like materials
19 for students who were not in preschool, but rather in
20 high school.

21 So they had -- in general education
22 environments, they had standards-based learning,

1 rather than functional curriculum. They had lesson
2 planning aligned with standards-based instruction on
3 grade level and appropriate for student age. They
4 had content mapping, knowing when they were going to
5 teach what throughout the course of the year. That
6 was not in place in GNETS program sites. There was a
7 lack of learning content and resources in GNETS
8 programs.

9 Therefore, I think your question was
10 related to what was in general education sites that
11 wasn't in GNETS programs, in general, and a lack of
12 learning content and resources.

13 There was the use -- overuse and reliance
14 on online instruction in place of certified educators
15 in GNETS, as opposed to in general education. You'll
16 have to forgive me. I think I'm switching back and
17 forth to what has and doesn't have, but it's in the
18 report.

19 Q. I'm following you.

20 A. Okay. Then the general education
21 environments had what is typical scheduling, master
22 schedules from students across the spectrum, that was

1 in place. And I can go on, but I'm just wondering if
2 I could hear the question one more time. I want to
3 make sure I'm not wandering.

4 Q. Sure. What I'm trying to determine is,
5 what are the specific services that are offered --
6 that you conclude are offered in general zoned
7 schools versus in a GNETS program.

8 A. Okay.

9 Q. And I'm not talking about, again, the
10 comparative physical plan. That was the piece I'm
11 excluding.

12 A. Okay, so we're still on the same page.

13 Q. Yeah.

14 A. So additionally, in general education
15 sites, there is regular access to specials,
16 connections and exploratory classes. That is not the
17 case in GNETS sites. Transportation within the GNETS
18 program is segregated or different from what you find
19 if you were going to a home school.

20 And I can continue going on and on, if you
21 would like, including poor school climate and
22 culture --

1 Q. Let me ask it this way. If there is a
2 service that you're opining is available in a general
3 zoned school, but not in a GNETS school, I would find
4 it in the report; is that right?

5 A. Yes.

6 Q. Okay. I mean, you've given --

7 A. I stopped at page 129, and it goes on for
8 a while. And I would encourage -- I just don't want
9 to keep reading this out loud, but it goes from 129
10 to, I believe, page 157.

11 Q. And you can tell by the amount of ink that
12 is on the pages, I have read it.

13 A. I see that. Again, I know, thank you.
14 Just thank you for that, I'm just going to say. But
15 on that note, I need to have a little break, if this
16 is an okay time.

17 MR. BELINFANTE: I think it's a good time.

18 THE VIDEOGRAPHER: Off the record at
19 15:40.

20 (Recess.)

21 THE VIDEOGRAPHER: On the record at 15:57.

22 BY MR. BELINFANTE:

1 Q. Dr. McCart, I'm going to show you what
2 we'll mark as Exhibit 7, which is the GNETS rule --
3 what I'll call the GNETS rule, and is included in
4 amended Appendix E.

5 (McCart Exhibit No. 7 was identified
6 for the record.)

7 BY MR. BELINFANTE:

8 Q. So I'm going to presume you have seen this
9 before. Is that accurate?

10 A. I have seen the GNETS rule. This looks a
11 little different, but --

12 Q. The formatting is probably different.

13 A. Yes.

14 Q. Okay. My question is, is there any -- is
15 it your opinion that there is anything in the GNETS
16 rule that is, per se, discriminatory? That's not a
17 good question.

18 Is there anything in the GNETS rule that
19 you find automatically causes unnecessary
20 segregation?

21 MS. TUCKER: Object to form.

22 THE WITNESS: Can you repeat the question?

1 BY MR. BELINFANTE:

2 Q. Sure. Is there anything in the text of
3 the GNETS rule that you opine or understand causes
4 unnecessary segregation?

5 A. I can't draw the line between words in a
6 rule and unnecessary segregation. There are
7 certainly concerns when looking at the rule.

8 Q. Okay. Could you identify for me what your
9 concerns with the rule are?

10 A. And maybe what I meant to say is, concerns
11 in implementation, and how it plays out within the
12 GNETS program.

13 So, for example, on the bottom of page 3
14 of the GNETS rule, sub -- section (4), sub (c), it
15 says, "The GNETS continuum of services by
16 environment," and then it proceeds to list one, two,
17 three, four, five, six possible service provision
18 and/or placement options for students who are in the
19 GNETS program.

20 And based on my multi-year review, I was
21 surprised at the number of students served in --
22 solely in GNETS centers for the school day, like one

1 through five were skipped.

2 Q. And what is your understanding of who
3 decides where those students are going to receive
4 services as in 1 through 6? Is it at the LEA level
5 or the state DOE level?

6 MS. TUCKER: Object to form.

7 THE WITNESS: As I stated earlier in the
8 day, if an IEP team is meeting regarding supports and
9 services for a student who has a behavior-related
10 disability, they can only offer what's available.

11 So for example, if in North Fannin,
12 Georgia, the only option available is a center, then
13 any student in that region that is referred to the
14 GNETS program has to attend a center, as opposed to
15 any of the other options that are listed as part of
16 this rule.

17 BY MR. BELINFANTE:

18 Q. And --

19 A. Therefore, unnecessarily segregated.

20 Q. Okay. And they're unnecessarily
21 segregated because the service is only provided in
22 the GNETS facility? Is that what I understand you to

1 say?

2 A. In the segregated GNETS center-based
3 facility, yes, the ones that are separate and
4 distinction from any relationship or connection to
5 the general education sites.

6 Q. Okay. Let's take your example of North
7 Fannin County. If in North Fannin County School
8 District, there are four students who qualify with
9 emotional/behavioral disability, is it your opinion
10 that that school district can partner with other
11 school districts in the area, and provide services in
12 order to achieve economies of scale, even if that
13 means providing education services in a segregated
14 environment?

15 A. I don't know what you're asking.

16 Q. Okay. So let's say -- you're familiar
17 with RESAs. We talked about that.

18 A. Yes.

19 Q. And in a RESA, school districts can work
20 across geographic boundaries, in terms of county
21 school districts, et cetera, to pool resources and
22 provide services; is that right?

1 A. I don't know about providing resources,
2 but I understand where you're going.

3 Q. Okay. Do you have -- have you, in your
4 report, looked at -- and I may have asked this
5 before, and I apologize.

6 A. That's okay.

7 Q. How LEAs -- what is the authority of an
8 LEA to raise funds independent of any state
9 appropriations?

10 MS. TUCKER: Object to form.

11 BY MR. BELINFANTE:

12 Q. And by raise funds, I mean taxing, not
13 bake sales.

14 A. I -- did you ask if I opined on that?

15 Q. Do you have an understanding of whether or
16 how LEAs can raise tax revenue to obtain resources,
17 independent of what the state may provide through
18 appropriations?

19 MS. TUCKER: The same objection.

20 THE WITNESS: No, it was not in the scope
21 of my review of this case.

22 BY MR. BELINFANTE:

1 Q. If a school district -- let's take North
2 Fannin again, within the entire district -- I realize
3 this is a hypothetical --

4 A. Yeah.

5 Q. -- has three students with an
6 emotional/behavioral disability scattered. One's in
7 lower school, one is in what I'll call middle school,
8 and then one is in upper school, high school. How
9 would that school district address the needs of those
10 students in an economically feasible manner?
11 Feasible understanding being subjective.

12 A. Sure.

13 Q. But I think you see where I'm going.

14 A. I do. And the easiest answer to that is
15 by following the recommendations that I put on --
16 starting on page 160, because those recommendations
17 lead to a system of support in which efficiencies are
18 created, service provision is appropriate based on
19 the student need, and support students with
20 disabilities, including those with behavior-related
21 disabilities without the need to unnecessarily
22 segregate those students based on geography.

1 Q. You mentioned one of your concerns with
2 the GNETS rule was on page 3, which is rule (4)(c).
3 Do you have any others that you're concerned with, in
4 terms of the GNETS rule itself?

5 MS. TUCKER: Object to form.

6 THE WITNESS: I would need to review this
7 in greater depth than you likely want -- you likely
8 want me to right now, to determine whether or not I
9 have any other concern regarding this rule.

10 BY MR. BELINFANTE:

11 Q. Let me ask this. If you had concerns with
12 the rule as written, would it be reflected in your
13 report?

14 A. It may or may not be reflected in the
15 report.

16 Q. Okay.

17 A. It's only reflected insomuch as it relates
18 to my findings and recommendations.

19 Q. Okay. Let's put that aside, then. Let's
20 look at page 41 -- not 41. Page 41 -- okay, in the
21 back of the report --

22 A. I just want to add one more time that I'm

1 not exactly sure if this is the same. So Exhibit 7.

2 Q. Okay.

3 A. Only to just check that.

4 Q. Okay. And we can do that, because I think
5 you identify the reg, based on Georgia Department of
6 Education's website. So it does look different.

7 A. Yes. And I think this is from Westlaw,
8 Yeah.

9 Q. If you could turn to Appendix A of your
10 report, the data tables and graphs.

11 A. Mm-hmm. Oh, I said mm-hmm, but I'm not
12 there.

13 Q. That's okay.

14 A. Yes.

15 Q. Okay. This is -- the work that's
16 reflected here was done by one of your colleagues; is
17 that correct?

18 A. This is my work. I had support from my
19 colleague, Jeong Choi, as noted in the beginning of
20 the report.

21 Q. Got it. If we can look at figure B.

22 A. Figure B in the report, I'm guessing?

1 Q. I'm sorry.

2 A. Which is --

3 Q. Yeah, which goes back -- it refers to
4 that.

5 A. Yeah.

6 Q. Yeah. And that's on page 14 of the
7 report.

8 A. Correct.

9 Q. Okay. You would agree with me, and I
10 think the report says this, that the overall number
11 of students who are receiving services through GNETS
12 has declined from school year '15 to '16 to school
13 year '21 to '22, correct?

14 A. I speak to that directly in the report on
15 page 15. "Even though total placement numbers" in
16 the GNETS program "indicate a decline in student
17 population in the GNETS program, the percentage of
18 new students admitted to the GNETS program has
19 remained steady. New student admission comprised
20 over 21% of the total GNETS program student
21 population in school year 2016-'17, and remained near
22 20% for the school year 2021-'22, as indicated in

1 Figure D."

2 Q. Okay.

3 A. The sum of that being the -- although the
4 overall numbers of students in the program are
5 reducing, the number of students being admitted are
6 still hundreds a year.

7 Q. Did you consider, in looking at this data,
8 if the numbers were reducing because students are
9 graduating, or because students are returning to
10 their zoned schools, or a combination?

11 A. There are no -- yes, I did consider that.

12 Q. Okay. And what did you find to be the
13 leading cause of the total number of students in
14 GNETS declining by almost half, not quite? Almost
15 half is lawyer math for 4400 to 2995.

16 A. Four minus two. That's half.

17 Q. I had to correct myself before you did it
18 for me.

19 A. Yeah.

20 Q. But my question is, and I'll repeat it.

21 Were you able to make a determination as to what
22 number graduated versus what number returned to their

1 zoned schools?

2 A. There's much more to the picture than
3 that, as you might expect, in that indicators such as
4 numbers of referrals to the program may have
5 decreased. Students being expelled or leaving the
6 program, but not graduating may have occurred. An
7 increase in district or regional area ability to
8 provide supports to students with behavioral related
9 disabilities without use of the GNETS program. So
10 there are a number of reasons, including concerns
11 with the quality of the program and the outcomes
12 experienced by students in the program.

13 Q. Okay.

14 A. Why those numbers have decreased. Again,
15 what is of concern is the number of students still
16 being admitted each year.

17 Q. And does your report -- and I may have
18 just missed it, but does your report actually explain
19 or provide an opinion as to why the number has
20 decreased? And by the number, I mean total students
21 receiving GNETS services.

22 A. Beyond what I've just stated, I'm not sure

1 that's --

2 Q. Let's look at Figure D on page 16.

3 A. Mm-hmm.

4 Q. Figure D is what you're referring to as
5 new students being placed in GNETS; is that correct?

6 A. New student placement in the GNETS program
7 by grade from '15-'16 to '21-'22.

8 Q. Okay. And here, would you agree with me
9 that the trend is downward from school year '16 to
10 '17 to school year '21-'22?

11 A. In total student enrollment?

12 Q. Yes.

13 A. Yes.

14 Q. Total new students, I'm sorry, being
15 admitted.

16 A. Oh, no.

17 Q. Okay.

18 A. The percentage of students being admitted
19 to the program each year remains the same.

20 Q. I'm sorry, but I'm looking at Figure D,
21 which is just the raw numbers. I'm not trying to be
22 tricky. I'm just trying to make sure I understand

1 the graphic.

2 It looks to me -- and am I reading this
3 correctly, that in school year '16 to '17, there were
4 898 new admittants to GNETS?

5 A. Mm-hmm.

6 Q. And so in school year '21 to '22, there
7 were 576?

8 A. Yes. So if the question is, is 898 higher
9 than the number 576, the answer is yes. When you
10 look at the proportion, because there are different
11 data sets. When you look at the proportion of
12 students, new students enrolled, that's what is
13 remaining constant at 20 percent.

14 Q. Okay.

15 A. Again, making the point of hundreds of
16 students being admitted each year.

17 Q. Does your report contain any analysis or
18 opinion as to why the overall number of new students
19 has declined from -- and declined consistently from
20 school year '16 to '17 to school year '21 to '22?

21 A. I'm just going to reference what I said
22 earlier to the question you asked, which was similar

1 or the same.

2 Q. Okay. And when you talk about the
3 percentage remaining the same, is that reflected in
4 one of the figures? The percentage of new student
5 admits to overall student population?

6 A. That is at the bottom of page 15.

7 Q. Okay.

8 A. It's actually -- that paragraph is
9 actually under Figure C, which talks about the number
10 of students -- proportion of students that are in
11 center-based sites versus school-based sites.

12 But what you're asking about is Figure D,
13 and the language you see at the bottom is what I
14 already read, which is the total placement numbers of
15 students, students placed in the program indicate a
16 decline in the student population, that the
17 percentage is still concerning, in that there are
18 hundreds of students each year still being admitted
19 to the GNETS program.

20 So we would look at whether or not, based
21 on the number of students in the program, is the
22 proportionate number of new admittants decreasing at

1 the same rate as the number of students in the
2 program.

3 Q. Why would you look at that as opposed to
4 the overall population within the program?

5 A. Because there's a disproportionate impact
6 on students who enter the program and remain over
7 multiple years. So you want -- so for example, if in
8 '21-'22, a new student is admitted to the program,
9 and that student's a kindergartner, they could be --
10 data would indicate that there's a likelihood that
11 that student would remain in the GNETS program for
12 many, many years.

13 Q. I guess -- and this is why lawyers
14 shouldn't play statistician for sure. But where I'm
15 getting confused on that is, if the overall number is
16 declining and people are coming in, it would seem to
17 me, based on that -- and the number of people who are
18 coming in is also declining, that people are cycling
19 in and out, it would suggest to me that they are
20 moving in and out, or they're not staying. Because
21 if they were staying, the overall number would stay
22 the same, given that there is, as you say, hundreds

1 of people coming in every year.

2 A. Hundreds of children.

3 Q. Yeah. So how am I misunderstanding
4 your --

5 A. I think maybe -- I know you looked at this
6 already, but maybe Figure E and F would be more
7 helpful in understanding that. I think the
8 misunderstanding is coming -- related to in and out.

9 Q. Okay.

10 A. So when you look, for example, at Figure
11 E, you see what's highlighted here, second graders in
12 '15-'16, year after year, 35 percent of those
13 students remained in the GNETS program for multiple
14 years.

15 Q. Okay.

16 A. So given the length of time students
17 remain in the program once admitted, there's a
18 disproportionate negative impact on the students who
19 enter the program at a younger age.

20 Q. Okay.

21 A. That's what this graph references.

22 Q. Okay.

1 A. And the same with the next graph. So a
2 student can just -- the data indicates that students
3 can be there for many years.

4 Q. And so just to --

5 A. And are.

6 Q. Just so I'm understanding the graphic,
7 let's take Figure E. In school year '15, there were
8 247 students admitted in the second grade for the
9 GNETS program. And by school year '21-'22, of that
10 247, 88 remained.

11 A. Yes.

12 Q. Am I reading that correctly?

13 A. You are reading that correctly.

14 Q. Okay. Is there anywhere I could go to
15 look at national data for -- comparative national
16 data to what I'm seeing in Tables B, C, D, E, and F?

17 A. B, C, D, E, and F.

18 Q. In other words -- let me back up a second,
19 because I'm looking at this in a vacuum as it relates
20 to Georgia.

21 A. Right.

22 Q. If I were to look at how -- let's just

1 pick on a state, Alabama, because they're next door,
2 Alabama's special education. And if I wanted to
3 track, you know, students who were in a special
4 education classroom and students who are not, is
5 there a place I could go to try to find that type of
6 information?

7 A. The uniqueness of the situation in Georgia
8 is the fact -- and why you're seeing it a bit in a
9 vacuum, as you said, is because it is a systemic,
10 statewide issue. And so there aren't comparative
11 national data, because this is a statewide system of
12 segregation.

13 Q. Is it -- okay. Is Georgia the only state
14 you're aware of that has freestanding -- public
15 freestanding schools for students with
16 emotional/behavioral disabilities?

17 A. The State of Georgia does not have
18 freestanding schools for students with
19 behavior-related disabilities. They have entities.

20 Q. What's the difference between a school and
21 an entity?

22 A. An entity is what the -- I don't know.

1 It's what it's called. Let me -- it's on page 20.

2 Let me take a look.

3 Q. Sure.

4 A. Starting at the full paragraph number 2,
5 it states, "unlike traditional special education
6 programs that operate within home schools, districts,
7 and sites within the GNETS program" -- "the sites
8 within the GNETS program are organized into a
9 regional GNETS program, and are viewed as special
10 entities, not schools."

11 Q. What's the authority for that sentence?

12 A. I would need to look again. You had asked
13 before the break if it was in my report, and I found
14 it in my report. But I would have to check the
15 documents again to see where that was located.

16 Q. Okay. Putting aside the phraseology, are
17 there other states that have freestanding buildings
18 for students with emotional and behavioral
19 disabilities, public -- in the context of public
20 education?

21 A. I was not asked to look at that as part of
22 this analysis. I was asked to specifically look at

1 the State of Georgia.

2 Q. Okay.

3 A. So whether or not there's the existence of
4 a freestanding school for students with
5 behavior-related disabilities, in and of itself, I
6 can't speak --

7 Q. I guess -- I mean, because a lot of times
8 today, you've told us, fairly or unfairly, but based
9 on your experience and your years of service and
10 looking at different states, et cetera, in all of
11 that experience, understanding it's not what you were
12 to look for in this report. But are there other
13 states that offer freestanding buildings where
14 students who have a diagnosis of an emotional or
15 behavioral disability receive an education, separate
16 from a generalized school?

17 A. Certainly if you think about -- oh, with
18 emotional and behavioral disorder. Certainly in
19 other states, there are environments in which
20 students who have behavior-related disabilities might
21 attend school that have segregated environments.

22 The distinction between that and this,

1 between that example and the GNETS program is the
2 systemic nature. And when you look, for example, at
3 the map and how many places and how many sites, just
4 referencing the ones I went to, the 70 sites that I
5 went to, the 26 centers -- 27 centers that I went to,
6 GNETS centers, the 36 school sites I went to, 33
7 counties, across a year-and-a-half time, that sheer
8 number is what is at issue here.

9 There's 24 different regional programs of
10 segregation across the state, which is different
11 than, is there a school somewhere in one of the
12 states that provides services to kids who have
13 behavior-related disabilities that is segregated.

14 Q. Well, isn't it better that the student
15 receive services closer to home? So if you're
16 looking at a freestanding building, take the State of
17 Wyoming, I think you mentioned earlier. If Wyoming
18 only had one versus Georgia that has several, where
19 folks can remain close to home, isn't that better and
20 less discriminatory?

21 MS. TUCKER: Object to form.

22 THE WITNESS: Students in the State of

1 Georgia that I observed were in segregated
2 environments that were very far from their homes.

3 BY MR. BELINFANTE:

4 Q. They would be further from their homes in
5 most cases, however, if there was only one location,
6 isn't that right?

7 A. You mean like in North Fannin?

8 Q. Sure. No, I mean, if like there was only
9 one GNETS facility in Atlanta, and so if an IEP team
10 said, you need to go to a GNETS facility, and the kid
11 lives in Savannah, or the kid lives in North Fannin
12 or Albany, take your pick. I mean, clearly, that
13 would be more segregating than breaking it out into
14 the 26 regions.

15 A. All of this is hypothetical. And again,
16 it's referencing the statewide systemic nature of
17 segregation. What would be better is if an IEP team
18 would be able to offer the full array of supports and
19 services that did not require unnecessary segregation
20 and lack of access to fair and equal educational
21 opportunities.

22 Q. What's the difference between fair and

1 equal educational opportunities and fair and
2 appropriate public education?

3 MS. TUCKER: Object to form.

4 THE WITNESS: I think I need you to
5 restate that.

6 BY MR. BELINFANTE:

7 Q. What's the difference between fair and
8 equal educational opportunities and fair and
9 appropriate public education, or FAPE?

10 MS. TUCKER: The same objection.

11 THE WITNESS: I don't know, at this point
12 in time, that I can articulate that. Right now,
13 right here.

14 BY MR. BELINFANTE:

15 Q. Okay. Could I ask you to go back to page
16 8 of your report. And sorry I'm skipping around.
17 The good news is that means I'm actually finishing.

18 A. Yeah. I mean, take your time.

19 Q. Right.

20 A. Page, I'm sorry, 8 you said?

21 Q. Page 8.

22 A. Mm-hmm.

1 Q. The question I have is about the chart or
2 Table 1 that begins on page 8, and continues on page
3 9. But equally, the Table 2 that's there and Table 3
4 on page 11. Is this a chart or a criteria that you
5 developed, is it one that you borrowed from
6 peer-reviewed studies or whatnot?

7 A. It is tables that I developed based on
8 well-documented indicators of segregated or
9 institutional environments within the field of
10 special education.

11 Q. Okay. Understanding that the articles
12 that are cited, or at least most of them, I won't say
13 all of them, because I know there's, like, news
14 articles and so on. But the field of special
15 education articles that are cited in Appendix --
16 amended Appendix E, would I find -- is there an
17 article that points to these factors, or is it just
18 based on your collection of the various articles that
19 are out there?

20 A. It's -- you would find in the appendix
21 some articles -- a number of articles that speak to
22 the indicators you see in Table 1, 2, and 3 in

1 different forms and formats.

2 Q. Okay.

3 A. Also, I've used my experience, having
4 worked in classroom environments, institutional
5 settings, community living organizations, and
6 students with behavior-related disabilities over the
7 course of my professional career.

8 Q. Can you look at page 9 of your report?
9 One of the things you look to is number 15. "Are
10 there spaces in which students in the GNETS program
11 are placed in time out or otherwise isolated based on
12 their behavior?"

13 A. Yes.

14 Q. Is it your experience that there are
15 places in general zoned schools where students may be
16 placed in time out or otherwise isolated based on
17 their behavior?

18 A. No.

19 Q. You've never seen a zoned school where
20 students are placed in time out or otherwise isolated
21 because of their behavior?

22 A. Not in the manner in which I'm referencing

1 in this report.

2 Q. Okay.

3 A. If you're asking, have I ever worked in a
4 preschool where a teacher had a student -- a
5 two-year-old sit down for a few minutes, yes. That's
6 not what we're talking about here.

7 Q. Okay.

8 A. Here, we're talking about widespread
9 isolation rooms. I know you looked at the pictures.

10 Q. Yeah.

11 A. And saw them.

12 Q. Okay. Let's go back to page 162. And the
13 first full paragraph there under that formula, if you
14 will?

15 A. Graphic.

16 Q. Graphic, yeah.

17 A. Formula, yes, thanks.

18 Q. Three or four sentences down. Or
19 actually, I'll just start with the second full
20 sentence. "This guidance includes statewide mapping
21 of what currently works within the state and the use
22 of current national evidence-based practices for

1 large scale implementation. Such effective practices
2 include, but are not limited to, standards-based
3 learning, MTSS, PBIS, social-emotional learning,
4 restorative practices, and readily available mental
5 health supports."

6 Do you see that?

7 A. Yes.

8 Q. What do you mean by restorative practices?

9 A. I believe I defined that also on page 6.

10 Let me take a quick look. I may not have.

11 No, I did not.

12 So restorative practices is a mechanism --
13 let me say, a set of practices implemented with
14 evidence behind them to support students in restoring
15 relationships with other students or adults in their
16 life.

17 This can include, for example, restorative
18 circles or teaching ways in which, if something has
19 happened between a student and another student, they
20 are able to work through that together, and restore
21 their relationship. It's a very oversimplified
22 definition of it, but that's the basic idea.

1 Q. That's okay. If you got more specific,
2 I'd probably -- no, not fall asleep. You'd probably
3 lose me.

4 What type of qualifications would someone
5 need to provide restorative practices?

6 A. They would need -- depending on what kind
7 of support they were providing, they would need
8 professional development and learning, maybe some
9 coaching on that. Those trainings can -- or
10 professional development sessions can last anywhere
11 from six hours to several days, depending on the type
12 of -- or level or intensity of practices that are
13 being utilized.

14 Q. Could someone without formal training in
15 psychology -- and by that, I mean at least a degree
16 in psychology or a licensed psychologist. Could they
17 provide effective restorative practices?

18 A. Absolutely.

19 Q. Okay. In that same sentence, right after
20 restorative practices, one of the effective practices
21 you identify are "readily available mental health
22 supports." How do you quantify whether mental health

1 supports are readily available?

2 A. In many of the documents, parents who were
3 not able to receive mental health services or
4 supports through the GNETS program accessed mental
5 health resources and supports in their community,
6 separate from their child's learning environment.
7 That's what I'm referencing. There's mental health
8 agencies and resources across the State of Georgia.

9 Q. Are you familiar with the term Community
10 Service Board as it relates to Georgia?

11 A. I don't think so.

12 Q. Okay. Let's --

13 A. I may have seen a document.

14 Q. Sure.

15 A. I don't recall right now.

16 Q. Let's take a hypothetical student with
17 emotional/behavioral disability. Let's presume that
18 student's IEP says they need mental health services.
19 The student receives mental health services paid for
20 by Medicaid, but outside the school setting. If they
21 receive it outside the school setting, is it your
22 professional opinion that that leads to unnecessary

1 segregation in the school?

2 A. I don't see those as related.

3 Q. Okay. Then I think I misunderstood what
4 you were talking about a moment ago, when I asked
5 about how do you quantify or determine what is
6 readily mental health support?

7 A. I was giving an example of what I saw in
8 some of the documents in which mental health services
9 were not provided in the GNETS program, and which
10 parents sought out mental health services in their
11 community. So that's what I meant by readily
12 available.

13 Q. Okay. So is it your opinion that Georgia,
14 putting aside -- well, is it your opinion that
15 students should be receiving mental health services
16 in schools and not outside of the school?

17 MS. TUCKER: Object to form.

18 BY MR. BELINFANTE:

19 Q. If such mental health services would be
20 appropriate to their needs?

21 MS. TUCKER: The same objection.

22 THE WITNESS: It is my opinion that

1 students have -- that have behavioral needs based on
2 their disability, that might include the need for
3 mental health supports, should be included in their
4 schooling experience, in order for them to be
5 successful.

6 BY MR. BELINFANTE:

7 Q. And I'm sorry, I may have misunderstood
8 what you said. You mean the mental health supports
9 should be included in their schooling experience?

10 A. Yes.

11 Q. Okay.

12 A. When a student has a behavior-related
13 disability, if part of the supports and services that
14 they need to be successful in school is mental health
15 support -- and again, remember, earlier, we talked
16 about how there's a continuum of service provision
17 around mental health supports as well, that they
18 should be able to receive those services and supports
19 in connection with their schooling or learning
20 experience.

21 Q. Okay. The same paragraph, right at the
22 end there -- well, I guess not right at the end. The

1 last set of three sentences. It begins, "Central to
2 the success of this work is the implementation of
3 effective practices within enabling contexts.
4 Enabling contexts exist in environments where
5 students are not segregated and have fair and equal
6 access to educational opportunities. This approach
7 will result in significant improvement (including
8 social, academic, behavioral, psychological) in
9 outcomes for the thousands of students currently
10 served in the GNETS program."

11 Do you see that?

12 A. I do.

13 Q. So if the state were to adopt your
14 recommended actions on the following pages, is this
15 paragraph saying that that would not work as long as
16 students are in a GNETS program?

17 A. No.

18 MS. TUCKER: Object to form.

19 BY MR. BELINFANTE:

20 Q. What do you mean, then, that it has to
21 happen in an environment where students are not
22 segregated and have fair and equal access to

1 educational opportunities?

2 A. If you look above at the formula we talked
3 about earlier, that sentence is referencing the
4 formula which talks -- and this is about -- the
5 formula is about national -- years and years of
6 national data on implementation -- systems level
7 implementation of educational and other initiatives.

8 That formula suggests if you put into
9 place effective practices, like we've talked about
10 today, that continuum of supports, and you have
11 effective implementation, we've also talked about
12 that today, like teacher efficacy and fidelity of
13 those effective practices, and you have a context
14 that is enabling to that, meaning that context
15 supports and promotes effective implementation,
16 supports and promotes effective practices, that those
17 three variables are key in resulting in socially
18 significant outcomes in this case for students in the
19 GNETS program.

20 When referencing not segregated, you could
21 say not unnecessarily segregated as part of a
22 statewide systemic system, because that's not an

1 enabling context. Does that make sense?

2 Q. I think so. And I'm going to ask a
3 question, because what I'm struggling with is, it
4 seems like a chicken and egg problem. In other
5 words, you could do these things, have effective
6 practice, effective implementation, but if there's
7 still students in the GNETS program, will it reach
8 them? Or does what you're describing apply only in
9 the zoned school to prevent children from having
10 their IEP team recommend GNETS services? Does that
11 make sense?

12 A. I understand -- what I understand is that
13 -- or what I think I understand is that whether or
14 not a student is in a segregated setting is not the
15 only determinant of an enabling context.

16 And in the case of the GNETS program, its
17 large-scale systemic segregation, as you said
18 earlier, over 24 regional programs across the state,
19 that systemic part of this equation is what's
20 problematic. That's what makes it not an enabling
21 condition.

22 Q. And I should have asked this to start. It

1 is your opinion that the GNETS program is not an
2 enabling context, correct?

3 A. Correct.

4 Q. As you describe it. Okay. So for those
5 students in the GNETS program, which you say is not
6 an enabling context, how does this formula reach
7 them, if an enabling context is critical to achieving
8 the socially significant outcomes?

9 A. An enabling context would offer a system
10 of support that included an array of services that
11 were not based on placement -- putting students in a
12 place as an intervention. Rather, building a system
13 of support in which students had access to the
14 resources they needed in order to be successful,
15 particularly for students who have behavior-related
16 disabilities.

17 Q. Okay.

18 A. It is not -- I'll stop there.

19 Q. You have described systemic adoption of
20 MTSS as transformational; is that right?

21 A. Where are you referencing?

22 Q. I've cheated. I've read articles and

1 books, so -- do you believe that --

2 A. Very studious.

3 Q. Yeah. Do you believe that if Georgia were
4 to adopt the recommended actions you identify on page
5 163 to 167, it would be transformal --

6 MS. TUCKER: Object to form.

7 THE WITNESS: Transformative?

8 BY MR. BELINFANTE:

9 Q. Thank you. I should have taken you up on
10 the offer of Coca-Cola, yeah.

11 A. Okay. I think the recommendations
12 included in the report, based upon my experience in
13 implementing these types of supports and services in
14 SEAs in other states, would be an effective way for
15 the state to consider how they might provide services
16 for students with behavior-related disabilities that
17 did not result in unnecessary or inappropriate
18 segregation, and a failure to provide effective
19 educational resources and supports.

20 MS. TUCKER: I just want to pause. I did
21 object to that one. It's not on the record.

22 MR. BELINFANTE: No objection to the

1 objection. I'm not saying I agree with the
2 objection.

3 MS. TUCKER: I understand.

4 BY MR. BELINFANTE:

5 Q. For the states that you have worked in and
6 have done that, is it your conclusion that there is
7 no unnecessary segregation of students with
8 emotional/behavioral disabilities in those states?

9 And let me clarify it. By states, I mean
10 the SEA, the Department of Education, not like if you
11 did work for a district in the state.

12 A. It's an impossible question to answer.
13 You've asked if -- it's -- the magnitude is so great
14 on that question, I can't -- I don't know how to
15 respond.

16 Q. Okay. Have you worked with the California
17 Department of Education or school districts within
18 California, or both?

19 A. Both.

20 Q. Let me show you what we'll mark as Exhibit
21 8, which is an article, I believe, of yours, as well
22 as others, from 2022.

1 (McCart Exhibit No. 8 was identified
2 for the record.)

3 BY MR. BELINFANTE:

4 Q. Are you familiar with this article?

5 A. Yes.

6 Q. My questions, at least right now, are
7 truly just factual, and I want to understand what
8 California did. And I'm looking at page 515, using
9 the pages of the article.

10 A. Mm-hmm.

11 Q. It says, in the first paragraph, "In late
12 2015, the California legislature appropriated \$10
13 million to be directed to a competition restricted to
14 one or more (in collaboration) with the state's 58
15 County Offices of Education to undertake a four-year
16 statewide scale up of MTSS with a whole child
17 perspective across all grade levels, Assembly Bill
18 104."

19 Do you see that?

20 A. Yes.

21 Q. Are the California County Offices of
22 Education the LEAs in California?

1 A. No.

2 Q. Okay, what are they?

3 A. They're county offices.

4 Q. Okay. Is an LEA in California, do they
5 extend beyond individual counties?

6 A. I --

7 Q. Let me ask it this way. In Georgia, we
8 have school districts, right?

9 A. Mm-hmm.

10 Q. Is a school district the equivalent of a
11 County Office of Education in California?

12 A. No.

13 Q. What's the difference?

14 A. One is a county office of education, maybe
15 similar to a RESA. I have not looked at that, but
16 just for some sort of context.

17 Q. Okay.

18 A. A county office that might provide
19 resources and supports to local education agencies
20 within the state.

21 Q. Got it, okay. So a county office of
22 education could be, for example -- you were in Fulton

1 County, Georgia?

2 A. (Nodding head.)

3 Q. And in Fulton County, we have the county
4 government, Fulton County Board of Commissions, and
5 then the Fulton County Board of Education, which are
6 just different government agencies.

7 A. Uh-huh.

8 Q. Or just presume they are. But in terms of
9 what you're talking about in the County Offices of
10 Education in California, are they under a county
11 board of education or are they under a county
12 government, like, you know, board of commissioners,
13 so to speak?

14 A. I would have to look at that.

15 Q. Okay.

16 A. I don't recall right now.

17 Q. Do you know how much of the \$10 million --
18 or how many county boards of education received any
19 of the \$10 million?

20 A. No.

21 Q. The effort -- continuing in the same
22 article, "the effort had the potential to reach more

1 than 1,000 school districts and more than 10,000
2 schools." Is that effort the one -- the 2015 effort?

3 A. I'm assuming so from the -- yes, from the
4 article.

5 Q. Okay. And then it says, "In 2016, the
6 Governor's budget added \$20 million more to the
7 effort. And in 2018, the legislature appropriated an
8 additional \$15 million to the scale-up the project,
9 bringing the total appropriation at that time to \$45
10 million and extending the timeline to 2023."

11 To your knowledge, how many school
12 districts in California have scaled-up MTSS, as is
13 described in this paragraph?

14 A. What I can say is that we were responsible
15 for the implementation of MTSS across every single
16 region within the states through --

17 Q. I'm sorry to interrupt. You said within
18 the states?

19 A. State. Sorry, state. Within the state.

20 Q. Got it.

21 A. And local education agencies within those
22 regions took up various degrees of implementation of

1 MTSS.

2 Q. Okay.

3 A. There was a statewide effort.

4 Q. But not all LEAs took up all levels of
5 MTSS?

6 A. No. I don't know.

7 Q. Okay. Could you turn to page 517 of the
8 article. In the second paragraph, under
9 Implementation Issues, it starts, "At present, MTSS
10 in the US, and to a lesser extent internationally, is
11 clearly in its ascendancy. In configuration with
12 Universal Design for Learning, it affords schools the
13 opportunity to subsume interrelated services under
14 one overarching umbrella framework." And I'm
15 skipping the citations.

16 My question is about the next one -- the
17 next sentence. "That said, however, recent research
18 indicates that the process of installing and
19 implementing MTSS to a criterion of full
20 implementation is proving to be a very difficult
21 undertaking, one that requires extensive professional
22 learning and intensive TA, particularly directed at

1 the local education agency capacity to support the
2 effort at the level of the schools."

3 Do you see that?

4 A. I do.

5 Q. This was written in 2022. Any reason that
6 that conclusion has changed, as you sit here today?

7 A. No.

8 Q. What is intensive TA?

9 A. It's providing professional learning
10 support and coaching, as we've been talking about
11 today, to local education agencies to provide
12 effective supports to schools.

13 Q. I'm sorry, what does just TA stand for?

14 A. Technical assistance.

15 Q. Got it.

16 A. Helping. Helping.

17 Q. Okay. The study goes on to say, "A study
18 of schools that received intensive TA to install MTSS
19 found only 11% of schools secured a fidelity of full
20 implementation score that exceeded the criterion of
21 80% within four years."

22 Do you see that?

1 A. I do.

2 Q. Any reason to disagree with that
3 conclusion today?

4 A. Any reason to disagree with that
5 conclusion today.

6 Q. Let me ask another question. Have you
7 seen a study that has updated those numbers since
8 2022, when this was published?

9 A. This references a Hicks et al. article
10 that was published in 2017 -- 2017. I think I might
11 be an author on it as well. So I might be
12 confounding the issue here, but I don't think there's
13 any reason to disagree with the sentence that is
14 here.

15 Q. Okay. Any reason to believe that what you
16 describe here would not be the case in Georgia?

17 A. You're asking me to pick up the words from
18 this report, or this article and what you've just
19 said, and apply that to the State of Georgia?

20 Q. I'm asking -- yeah, I'll phrase it this
21 way. Any reason to believe that the process of
22 installing and implementing MTSS to a criterion of

1 full implementation would be something other than
2 very difficult in the State of Georgia?

3 A. I don't know --

4 Q. Okay.

5 A. -- whether or not that would be very
6 difficult. As I've outlined in the recommendations,
7 it requires a commitment, and I can't remember the
8 exact wording, but an investment. That was the word.
9 Investment of -- and a belief that MTSS is an
10 effective strategy for providing supports. And then
11 having the state outline the vision and guidance for
12 that implementation across the state.

13 Q. Okay. I understand.

14 A. That journey for Georgia is unique to
15 Georgia.

16 Q. But is there any reason to believe -- I
17 understand it's unique to Georgia, but is there any
18 reason to believe that it would be any easier to
19 fully implement MTSS at the LEA level in Georgia than
20 Mr. Choi, and perhaps you as well, in this 2019
21 article -- I don't know if you were part of the et
22 al. -- concluded.

1 MS. TUCKER: Object to form.

2 THE WITNESS: Can you say that again?

3 BY MR. BELINFANTE:

4 Q. Sure. And I got lost in citing the
5 article.

6 A. Go ahead.

7 Q. Is there any reason to believe that the
8 conclusions that were found in that 2019 Choi
9 article, that it would be easier to implement and
10 install MTSS to a full criterion in Georgia than was
11 the experience in that article?

12 A. From an SEA perspective?

13 Q. From an LEA perspective. Because
14 ultimately, it's the LEAs that are implementing this,
15 correct?

16 A. This is a statewide effort of
17 implementation, statewide scale-up of MTSS. And I
18 believe this is a reference to how LEAs responded to
19 the statewide direction, guidance, and vision for
20 implementing MTSS.

21 Q. Okay.

22 A. And so how -- the sheer magnitude of the

1 State of California and the number of students, the
2 number of districts, the number of regions, the
3 number of counties, the number of schools certainly
4 contribute to the complexity of implementation like a
5 State of California. How that would play out in
6 Georgia is yet to be seen.

7 Q. Okay. Again, this is truly a factual
8 question. Page 522 of the article talks about
9 schools participating in the CAMTSS and SWIFT-FIA.

10 A. Show me where you're at.

11 Q. The bottom, where it says, "Participants."

12 A. 522?

13 Q. 522. Is that where the appropriations
14 that we talked about that are discussed on page 515
15 of the article --

16 A. No.

17 Q. Something totally different?

18 A. What this -- you're talking about the --
19 well, I interrupted you. Why don't you go ahead and
20 ask your --

21 Q. I think you answered the question. I was
22 trying to understand if there was a link between the

1 two.

2 A. The dollars and the FIA?

3 Q. Correct.

4 A. Okay, there is no linkage there.

5 Q. Okay.

6 A. The FIA is an example, you asked earlier,
7 of a fidelity measure for implementation of a system
8 of support. And the FIA is another one of those.

9 Q. Okay. Got it. We can put that one away.
10 Let me show you what we'll mark as Exhibit 9.

11 (McCart Exhibit No. 9 was identified
12 for the record.)

13 BY MR. BELINFANTE:

14 Q. And this is an older article, one from
15 2014, you wrote with -- is it Dr. Sailor?

16 A. Yes.

17 Q. Okay, with Dr. Sailor.

18 A. Mm-hmm.

19 Q. My question is about -- this is right at
20 the time, I believe -- at or around the time that
21 SWIFT received the \$24.5 million grant?

22 A. Two years after.

1 Q. Two years after?

2 A. Mm-hmm.

3 Q. And it was at that time, in the first
4 paragraph, you note that "federal data sources
5 indicate percentages of students served" --

6 A. Hang on.

7 Q. Sure.

8 A. Where are we at?

9 Q. First paragraph under the
10 Kleinhammer-Tramill, Burrello, and Sailor quote.

11 A. Uh-huh. I'm with you, "Federal data
12 sources" --

13 Q. -- "increased percentages of students
14 served under the Individuals With Disabilities
15 Education Improvement Act (IDEA) 80% or more of the
16 time in the general education classroom, but most of
17 the variance is associated with students who require
18 fewer support needs, while remaining dismal for those
19 with more needs," citing McLeskey and others' article
20 in 2012.

21 A. Yes.

22 Q. Has that distinction remained today in

1 2023, where there's greater variance with students
2 who require fewer supports and -- from those who have
3 more needs?

4 A. Variance of what kind of supports?

5 Q. Variance in -- for two different
6 populations, right? The students who require fewer
7 supports, and those who have more needs. As I
8 understand your description of the federal data,
9 students who are spending 80 percent or more time in
10 general education, if they have fewer needs, that
11 number has varied.

12 But students who have, in the words of the
13 article, more needs, that number had remained low or
14 dismal. My question is, has that changed since 2012,
15 based on -- and I'm citing 2012, because that's the
16 article cited.

17 A. Mm-hmm. This citation is from James
18 McLeskey and others, and how they describe students
19 with more or less needs. And again, not to be
20 challenging, but rather just for clarity, how you
21 determine student need is varied, based on the source
22 of data that they're utilizing to make this decision.

1 So it's hard for me to say whether or not
2 the fact that was stated in 2012 by James McLeskey is
3 the same today.

4 Q. Okay.

5 A. Without knowing a little bit more.

6 Q. Okay. If I wanted to find data on that,
7 because I know we've talked about, there was a report
8 to Congress from U.S. DOE Special -- Office of
9 Special Education. Where would I look to find that
10 most recent data?

11 A. You could find that data in likely some of
12 the documents considered here.

13 Q. Okay.

14 A. In the list of materials. I can't recall
15 the name. Again, if it was morning, maybe I could.

16 Q. Okay.

17 MR. BELINFANTE: All right. Why don't we
18 do this. If we could take another ten-minute break.
19 This is my -- I can start to close things up, which
20 does not mean expect only 15 minutes left.

21 THE VIDEOGRAPHER: Off the record at
22 17:07.

1 (Recess.)

2 THE VIDEOGRAPHER: On the record at 17:22.

3 BY MR. BELINFANTE:

4 Q. Dr. McCart, I'm going to show you another
5 one of your articles from 2020, which we'll mark as
6 Exhibit 10.

7 (McCart Exhibit No. 10 was identified
8 for the record.)

9 BY MR. BELINFANTE:

10 Q. Do you recall this article?

11 A. Yes.

12 Q. Okay. In the abstract, the first couple
13 sentences say, "Inclusive educational practices are
14 rooted in a body of research indicating that when
15 students in need of support through special education
16 are meaningfully included in schools, academic and
17 social outcomes improve for all students. To realize
18 this promise of better outcomes, traditional schools
19 with separate classrooms and even schools designated
20 to exclusively serve various learner subgroups (e.g.,
21 students identified for special education) will
22 require reorganized systems, structures, and

1 resources."

2 Do you see that?

3 A. Yes.

4 Q. Any reason why that would not apply to the
5 State of Georgia?

6 MS. TUCKER: Object to form.

7 THE WITNESS: As a researcher, it's
8 difficult to pick up words that were written a while
9 ago, and apply them to a separate context.

10 BY MR. BELINFANTE:

11 Q. You're articulating here a general rule,
12 though, that better outcomes -- to achieve better
13 outcomes, "schools designated to exclusively serve
14 various learner subgroups (e.g., students identified
15 for special education) will require reorganized
16 systems, structures, and resources." That's what
17 you're applying as a general rule, correct?

18 MS. TUCKER: Object to form.

19 THE WITNESS: What is written here is a
20 sentence to introduce the concept of the -- what
21 occurs in the article. To take a sentence written
22 many years ago, and just apply it wherever, however,

1 is not something I feel comfortable doing. But if
2 you want to ask something more specifically.

3 BY MR. BELINFANTE:

4 Q. Do you believe that in order to increase
5 better outcomes in Georgia, "schools designated to
6 exclusively serve various learner subgroups (e.g.,
7 students identified for special education) will
8 require reorganized systems, structures, and
9 resources"?

10 A. I believe that the GNETS program, which is
11 currently operating as a segregated program, will
12 need to implement the recommendations that I have in
13 the report, which include implementations of more
14 effective systems, structures, and resources, yes.

15 Q. And it will require not a reorganization
16 of existing systems; is that right?

17 A. What -- again, you're asking me to pull a
18 word out of an article written many years ago before
19 I was even involved in this case. And so again,
20 would there be any reorganization that might occur as
21 determined by the state, based on my recommendations?
22 That would be entirely up to the state.

1 Q. Did you write the abstract?

2 A. I do not recall.

3 Q. Okay. Do you approve the abstract or do
4 you know if it's written by the journal?

5 A. The abstract, in almost all cases in
6 education, is written by the authors.

7 Q. By the authors, okay. So you stand behind
8 at least, then, the statement that we've talked about
9 and read now a couple times?

10 A. As it relates to this article.

11 Q. As it relates to the article? Okay. As
12 you sit here today, any reason to believe this
13 statement that you have articulated would not apply
14 to the State of Georgia?

15 A. I can't apply this to the State of
16 Georgia.

17 Q. On the next page, page 9 of the article,
18 one, two, three -- the third full paragraph, the last
19 sentence starts, "Further, despite a long history of
20 federal lawsuits, Supreme Court decisions, and U.S.
21 Department of Education policy imperatives and a
22 preponderance of research evidence challenging the

1 utility of segregated places, widespread categorical
2 segregation of students identified for special
3 education continues to this day."

4 Do you see that?

5 A. I was behind you in finding it. Where did
6 it start?

7 Q. I'm sorry. "Further," and the word
8 "further" is all the way on the right, in the third
9 full paragraph. It's the last sentence.

10 A. Okay, sorry. I can read it now.

11 Q. Just let me know when you're done.

12 A. Okay, I've read it.

13 Q. Do you believe that was accurate as of
14 2020?

15 A. This cites a report from the National
16 Center of Education Statistics in 2017.

17 Q. Mm-hmm.

18 A. So.

19 Q. But it's in your 2020 article.

20 A. Yeah, the publication process takes a
21 while.

22 Q. Sure.

1 A. And you can cite different time periods,
2 but the statement that is above is related to the
3 2017 reference.

4 Q. All right. Continuing to the next
5 paragraph, the first two sentences read, "Recent data
6 suggest some progress is evident in providing greater
7 access to a general education curriculum for students
8 considered to have high incidence or 'mild and/or
9 moderate' disabilities," skipping the citation.

10 "However, for students considered to have low
11 incidence, or 'severe' disabilities, few
12 opportunities exist to learn from the general
13 education curriculum alongside non-disabled peers,"
14 citing a Kurth article from 2014 and the NCES article
15 -- or study from 2017.

16 Do you see that?

17 A. I do.

18 Q. Okay. And that was accurate at the time
19 that this was submitted for publication?

20 A. Yes.

21 Q. Okay. Starting on page 10.

22 A. I'm going to -- let me pause for a second.

1 Q. Sure.

2 A. I don't want my tiredness to have me short
3 cut my reflection on the question you asked. And I
4 think you asked whether or not that statement was
5 true as it was stated and referenced in 2017.

6 Q. Well, I said at the time of publication --
7 or at the time that it was submitted to publication.

8 A. I think there are elements of that
9 statement that are true. Meaning that -- and let me
10 clarify. Meaning that the relevance of high
11 incidence and/or mild or moderate disabilities, as
12 compared to low incidence or more significant
13 disabilities, sometimes there are distinctions made
14 in how those students are provided supports in
15 general education curriculum. And in that way, this
16 statement is correct.

17 Q. Are you aware of any reports that further
18 update the findings of Kurth, Morningstar, and
19 Kozleski from 2014, or the NCES from 2017?

20 A. I would have to look.

21 Q. Okay. Could we turn to page 10? Have you
22 concluded --

1 A. Mm-hmm.

2 Q. Okay. The first sentence on page 10
3 reads, "Much of the somewhat contentious discourse
4 around least restrictive environment has been linked
5 to the term 'inclusion.'"

6 Do you see that?

7 A. Yes.

8 Q. What did you mean by contentious
9 discourse?

10 A. Although typically it is difficult to
11 identify who might have said what in any given
12 article, I can absolutely affirm that my colleague,
13 Dr. Sailor, made this statement. And I'm not sure
14 what he meant about the contentious discourse.

15 Q. Okay. But your name is on here with it,
16 correct?

17 A. Yes, it is.

18 Q. So presumably, you would agree with that;
19 is that right?

20 A. No.

21 Q. You don't agree with the statement --

22 MS. TUCKER: Object to form.

1 BY MR. BELINFANTE:

2 Q. -- in the first sentence on page 10?

3 A. What I said was, I don't know what he
4 meant by the contentious discourse statement, and as
5 it relates to inclusion, which is what I thought you
6 were asking me.

7 Q. That's fair.

8 A. Okay.

9 Q. Do you agree with the statement that "Much
10 of the somewhat contentious discourse around least
11 restrictive environment has been linked to the term
12 'inclusion'?"

13 A. Since I'm not sure what he means by
14 contentious discourse, I can't say that I agree with
15 this statement.

16 Q. Dr. McCart, do you normally put out
17 journal articles with your name, where you disagree
18 with statements in the journal?

19 A. No.

20 Q. The last sentence, first paragraph says,
21 "The inclusion movement, while making progress with
22 students labeled as having mild or moderate

1 disabilities, has been largely unsuccessful with
2 students labeled as having 'severe' disabilities."

3 Do you see that?

4 A. No, I didn't see where you were.

5 Q. Last sentence, the same paragraph, the
6 first paragraph on page 10.

7 A. Did you say it started "with these
8 approaches"?

9 Q. "The inclusion movement."

10 A. I need help.

11 MS. TUCKER: Can I point it out to her?

12 MR. BELINFANTE: Of course.

13 MS. TUCKER: That's where I did that.

14 THE WITNESS: Yes.

15 BY MR. BELINFANTE:

16 Q. Is it a fair reading that in 2020 -- at or
17 around the time of 2020, when this was submitted for
18 publication, the inclusion movement had been largely
19 unsuccessful for students labeled as having severe
20 disabilities?

21 A. "The inclusion movement, while making
22 progress with students labeled as having mild or

1 moderate disabilities, has been largely unsuccessful
2 with students labeled as having 'severe'
3 disabilities."

4 If you're asking me, do I agree with the
5 fact that Kurth, who cited that, has that belief, I
6 do.

7 Q. Do you have that belief, or did you in
8 2020 when this was published?

9 A. That students with more significant
10 disabilities have had more difficulties regarding
11 being included?

12 Q. At or around the time that you submitted
13 this article for publication, did you agree with the
14 statement that the inclusion movement, while making
15 progress with students labeled as having mild or
16 moderate disabilities, has been largely unsuccessful
17 with students labeled as having severe disabilities?

18 A. Forgive my pausing, as we are near the end
19 of the day. And the preparation and writing of this
20 article occurred likely in 2018. And you're asking
21 me, back at that time, if I felt or agreed with this
22 perspective. And it's a lot to remember and a lot to

1 recall, so that's the pause here.

2 When you publish an article with
3 coauthors, there's a bit of a negotiation around the
4 language that occurs. And so it would be difficult
5 for me to suggest that the inclusion movement, per
6 se, has been largely unsuccessful. Certainly there
7 is more work to be done, so that students could
8 access general education curriculum. How that
9 relates to the GNETS case, I'm not sure.

10 Q. Has the inclusion movement been largely
11 unsuccessful for students labeled as having severe
12 disabilities?

13 A. I just answered that.

14 Q. You said it has been largely -- you can't
15 say it's been largely unsuccessful overall, or you
16 didn't have the limitation about students with severe
17 disabilities. So my question is about, has the
18 inclusion movement been largely unsuccessful for
19 students labeled as having severe disabilities?

20 A. I think how I might rephrase that is, the
21 inclusion movement, in general, has been difficult
22 for students having disabilities, including those

1 with severe disabilities.

2 Q. Okay. Do you consider yourself part of
3 the inclusion movement?

4 A. No.

5 Q. When you said in your report that you want
6 teachers -- and this is on page 161, that your hope
7 that "educators within the GNETS program will embrace
8 the recommendations and see themselves as part of a
9 movement toward better support themselves
10 professionally and better outcomes for students with
11 behavior-related disabilities." Do you consider
12 them -- are you hoping that they will see themselves
13 as part of the inclusion movement?

14 A. No.

15 Q. What is the inclusion movement as defined
16 in your article from 2020 with coauthors Choi and
17 Sailor?

18 A. I would have to look and see what, again,
19 they're referencing. But they're referencing a Kurth
20 article in 2014. I can say that what I'm referencing
21 in the GNETS report related to students in the GNETS
22 program is not about an inclusion movement.

1 Q. Page 11 of the same article, the second
2 full paragraph beginning, "We argue." "We argue that
3 the time has come, through the advent of
4 whole-school, equity-based inclusive MTSS, to replace
5 the medical model construct of disability with a
6 human capability construct that reflects the
7 significant contribution of the learning ecology to
8 individual students' response to instruction."

9 Do you see that?

10 A. Yes.

11 Q. Is that like what we were talking about
12 before, in terms of having -- where someone has a
13 particular diagnosis, i.e., autism, and then they get
14 a panoply or a series of services based on that
15 diagnosis? Is that what that's referencing here?

16 A. In part.

17 Q. Okay.

18 A. It's larger than that, but you're in the
19 same zone.

20 Q. All right. Is it your professional
21 opinion that Georgia local education agencies employ
22 a medical model construct of disability?

1 A. No.

2 Q. I wish I could -- what was the phrase we
3 used --

4 THE VIDEOGRAPHER: I don't want to
5 interrupt your flow, sorry. Could you raise your mic
6 a little bit?

7 MR. BELINFANTE: It would be helpful if I
8 put it on, right? Thank you.

9 THE VIDEOGRAPHER: Thank you.

10 BY MR. BELINFANTE:

11 Q. Do you recall the phrase that that was
12 that we talked about?

13 MS. TUCKER: Object to form.

14 BY MR. BELINFANTE:

15 Q. Categorical service delivery. Is that it?

16 A. Non-categorical service.

17 Q. Non-categorical service delivery. Is it
18 your professional opinion that Georgia employs --
19 Georgia's LEAs provide a categorical service delivery
20 system?

21 A. No.

22 Q. Is it your opinion that Georgia LEAs

1 employ a human capability construct that reflects the
2 significant contribution of the learning ecology to
3 individual students' response to instruction?

4 A. You're making a lot of leaps from an
5 article, and again, published in 2020, written
6 several years before about what kind of services and
7 supports are in place in the State of Georgia. And
8 I'm having trouble trying to, again, draw the line
9 between what you're asking.

10 Q. Did Georgia IEP teams, in your review of
11 them, tend to employ what I'll refer to as the
12 medical model, as described here on page 11, or as we
13 talked about earlier, the -- I'll get there --
14 categorical service delivery model?

15 A. IEP teams -- based on the IEP -- IEPs that
16 I reviewed, employed a variety of interventions and
17 supports, some of which may be more closely aligned
18 with a medical model, some which may be more closely
19 aligned with a human capability construct.

20 Q. Okay. So there's variety within the IEP
21 team -- or IEP reports you reviewed, is that fair?

22 A. Yes.

1 Q. So that would, then, lean to indicate that
2 the Georgia Department of Education is not dictating
3 the model that the IEP team should use, correct?

4 MS. TUCKER: Object to form.

5 THE WITNESS: No.

6 BY MR. BELINFANTE:

7 Q. Well, if there's variety, then what is the
8 Georgia Department of Education doing to cause either
9 an IEP team to adopt either a medical construct or a
10 human capability construct?

11 A. That leads back to the issue we discussed
12 earlier about systemic segregation. And when a
13 systemic model of segregation is in place, the use of
14 categorical service delivery is more likely to be
15 prevalent.

16 So by supporting -- perpetuating funding
17 the GNETS program, as I have seen it and evaluated it
18 in my report, that is how the state is implementing
19 categorical service delivery options.

20 Q. But it's really not implementing it if
21 some of the IEP teams are adopting something very
22 counter to that, correct?

1 A. IEP teams can only implement what is
2 available.

3 Q. And so if the Department of Education were
4 imposing systemic segregation, how are teams -- IEP
5 teams adopting a human capability construct approach?

6 MS. TUCKER: Object to form.

7 THE WITNESS: An IEP team can look at an
8 individual student and implement a strategy that is
9 focused on human capabilities.

10 For example, an IEP team might say, the
11 student who has autism needs support in order to be
12 able to communicate. The IEP team all agrees. It's
13 a human capability approach to establishing a goal or
14 an intervention for a student who has a
15 behavior-related disability.

16 The ability to implement that depends on
17 the context, the proximity, and the opportunity of
18 that student to be able to access that system of
19 communication. And, for example, in the GNETS
20 program, again, which is unnecessarily systemically
21 segregating, there are no effective communication
22 systems in place for students with behavior-related

1 disabilities, for students with autism in all of the
2 sites that I went to.

3 So an IEP team can say, hey, it would be a
4 good idea for us to put a communication system in
5 place to help this student. Everybody agrees. The
6 only place the student can go is GNETS, because
7 that's all we've got. So they send the kid to
8 GNETS -- the child to GNETS. And the system can't be
9 implemented because there's no communication system.

10 Q. How would an IEP team recommend GNETS if
11 there's not the service that they're recommending
12 there? Are you saying that they send them to GNETS,
13 but there's not the service there. So if they've
14 identified the service, and they recommend placement
15 in GNETS, putting aside placement if that's the right
16 term, but -- and the service isn't there, hasn't the
17 IEP team failed to identify the service and recommend
18 placement that achieves that service?

19 MS. TUCKER: Object to form.

20 THE WITNESS: You're asking me to state
21 whether or not an IEP team has failed because the
22 large-scale segregation system that's in place within

1 the state does not offer and provide effective
2 individualized strategies, consistent with what's
3 available to students with disabilities in general
4 education environments.

5 BY MR. BELINFANTE:

6 Q. No. Because if that's what I was asking,
7 then they would have the service available in the
8 general education environment. You keep saying
9 large-scale systemic discrimination, and I still
10 can't identify what the IEP team is doing based on a
11 decision or an affirmative act of the Georgia
12 Department of Education.

13 So we first talked about the hypothetical
14 where the student has autism, and needs speech or
15 communication services. They're referred to GNETS.
16 You stated that GNETS does not have communication
17 services for students with autism. Am I right so
18 far?

19 A. Mm-hmm.

20 MS. TUCKER: Object to form.

21 THE WITNESS: Oh.

22 BY MR. BELINFANTE:

1 Q. So an IEP team that recommended that
2 student with autism to GNETS for communications
3 services would not be recommending a placement that
4 provides a FAPE for that student, would they?

5 MS. TUCKER: Same objection.

6 THE WITNESS: I'm not sure you're
7 understanding the construct of what a large-scale
8 systemic system of segregation can do to service
9 provision within a state.

10 And so an IEP team may meet and make a
11 decision in the hopes that a communication strategy
12 or program could be put in place for a student with
13 autism.

14 But in reality, that system is not put in
15 place, and that's, again, because it is not an
16 enabling context. It's not fair and appropriate.
17 There aren't the same resources, supports,
18 interventions that are in place in general education
19 environments, even for students with disabilities --
20 behavior-related disabilities in those environments.

21 BY MR. BELINFANTE:

22 Q. Is it your understanding and opinion that

1 a student in Georgia can get services in their
2 general education -- or general zoned school, and the
3 IEP team recommends them to GNETS anyway?

4 A. I don't know why that would be the case.

5 Q. And -- well, okay. I don't, either, so I
6 guess we're in agreement there.

7 A. Are we?

8 Q. I think so.

9 A. I don't.

10 Q. Well, then tell me why an IEP team would
11 come to a conclusion that an autistic student needs
12 communication services, the zoned school offers
13 communication services, and the IEP team recommends
14 the student for GNETS.

15 A. The GNETS program purports that it
16 provides behavioral and therapeutic supports and
17 services for students who have behavior-related
18 disabilities. The IEP team, like, it's supposed to
19 be the service provision mechanism for students who
20 have behavior-related disabilities.

21 So the IEP team might make the assumption
22 that the GNETS program, given their behavioral

1 therapeutic system of support, could provide a system
2 of communication as indicated as part of the
3 student's IEP, when, in fact, in reality, those
4 services and supports are not occurring.

5 Q. Isn't the responsibility of the IEP team
6 to look at the reality and not make assumptions?

7 MS. TUCKER: Object to form.

8 BY MR. BELINFANTE:

9 Q. In order to make sure that a student is
10 provided with a FAPE?

11 A. I don't know. I don't know what you're
12 asking, I should say.

13 Q. Well, you said the IEP team assumes that
14 something will be provided at GNETS. My question is,
15 shouldn't they be making -- not assuming things, but
16 base it on what you've referred to as the reality?

17 A. You're asking, should the IEP team go or
18 something?

19 Q. I'm saying should the IEP team make its
20 decisions based on assumptions or based on what
21 you're describing as the reality of GNETS?

22 A. The IEP team is making their decisions

1 based on what they have been told by the state as
2 being provided as part of the system of education.

3 Q. Okay. Show me in Appendix E, amended,
4 where the state has told the IEP team anything about
5 GNETS.

6 MS. TUCKER: Object to form.

7 BY MR. BELINFANTE:

8 Q. Where has the state told an IEP team about
9 GNETS?

10 MS. TUCKER: The same objection.

11 THE WITNESS: I'm looking at the GNETS
12 rule, page 4. Your copy is Exhibit 7.

13 BY MR. BELINFANTE:

14 Q. Sure.

15 A. That talks about the SEA shall. "The SEA
16 shall:" -- looking under 5, Duties and
17 Responsibilities. "The SEA shall:" (A), looking at
18 number iii, "Monitor GNETS to ensure compliance with
19 federal and state policies, procedures, rules, and
20 the delivery of appropriate instructional and
21 therapeutic services."

22 That's one place, from my perspective,

1 that I believe it states that.

2 Q. This is the document where you believe
3 that the state is communicating to IEP teams that
4 they need to send someone to GNETS?

5 A. No.

6 Q. Okay, that was my question.

7 A. You asked what -- could I point to one
8 document in which the state made a recommendation
9 about whether or not IEPs -- the IEP team should or
10 could be involved.

11 Q. And your answer is (5)(a)(iii) that begins
12 with "Monitor"?

13 A. "The SEA shall: Monitor GNETS to ensure
14 compliance with federal and state policies,
15 procedures, rules, and the delivery of appropriate
16 instructional and therapeutic services" as it relates
17 to students within the GNETS program who have
18 behavior-related disabilities. That's one place.

19 Q. Where is the others? I mean, did you see
20 an email where the state said, this person needs to
21 go to GNETS? Did you see an IEP file where the state
22 DOE said, this person needs to go to GNETS, anything

1 like that?

2 A. You're asking if I saw any documents that
3 discussed whether or not students should go to the
4 GNETS program?

5 Q. From the State Department of Education to
6 an IEP team.

7 A. I do not recall right now. I would have
8 to review the documents again to answer that.

9 Q. And you agree with me that the rule on
10 page 3, paragraph (4)(a) says, "The IEP team must
11 determine that GNETS services are necessary for
12 students to receive FAPE"?

13 MS. TUCKER: Object to form.

14 BY MR. BELINFANTE:

15 Q. Do you see that?

16 A. No, I don't know where you are.

17 Q. Page 3, paragraph (4)(a), first sentence.

18 MS. TUCKER: On page 3.

19 THE WITNESS: Page 3, (4)(a). Mm-hmm.

20 BY MR. BELINFANTE:

21 Q. Okay?

22 A. Yes, I see where you are at.

1 Q. So the IEP team is -- in order to have
2 GNETS services, the IEP team has to determine "that
3 GNETS services are necessary for the student to
4 receive FAPE." Do you see that?

5 A. Mm-hmm. Yes, I do see that.

6 Q. So if an IEP team determines that -- and I
7 realize I'm now asking you a different question than
8 I just did -- and the state says, no, you can't send
9 that child to GNETS, the state would be disagreeing
10 with the IEP team on what is necessary to receive
11 FAPE. Isn't that correct?

12 A. If you go two bullets down, "The GNETS
13 continuum of services."

14 Q. Mm-hmm.

15 A. Established by the state talks about the
16 types of services available within the GNETS program
17 for IEP teams to consider when thinking about
18 placement in the GNETS program for student IEP teams.

19 Q. What is the basis of your statement that
20 the GNETS continuum of services is, quote, provided
21 by the state?

22 MS. TUCKER: Object to form.

1 THE WITNESS: Can you ask the question
2 again?

3 BY MR. BELINFANTE:

4 Q. Sure. What is the basis of your statement
5 made just a moment ago that GNETS "continuum of
6 services" is provided by the state?

7 A. That the title of this document, Title
8 160. Rules of the Georgia Department of Education,
9 Chapter 160-4-7, Special Education. That is my --
10 that's why I have that perspective.

11 Q. Okay. We talked earlier about your book
12 and that of others. Actually, before we get there,
13 what is the National Center on Inclusion Toward
14 Rightful Presence?

15 A. Sir?

16 Q. Yes.

17 A. How much time is left?

18 Q. I'm not sure.

19 A. Can we ask?

20 THE VIDEOGRAPHER: About -- at 18:24,
21 you'll be at seven -- seven hours.

22 BY MR. BELINFANTE:

1 Q. It's about 24 minutes left.

2 A. 24 minutes left?

3 MR. BELINFANTE: Is that correct?

4 THE VIDEOGRAPHER: Yes.

5 MR. BELINFANTE: All right.

6 THE WITNESS: Okay.

7 BY MR. BELINFANTE:

8 Q. Are you familiar with the National Center
9 on Inclusion Toward Rightful Presence?

10 A. I am.

11 Q. Is there any recommendation in your report
12 that is coming from, or consistent with the National
13 Center on Inclusion Toward Rightful Presence?

14 A. I see you're looking at a document. Are
15 you referencing that document?

16 Q. No, I'm asking right now if there's any --
17 I haven't yet, so I'm just asking right now, is there
18 anything in your report that stems from the National
19 Center on Inclusion Toward Rightful Presence?

20 A. No.

21 Q. Okay. Let's talk about your book, Build
22 Equity, Join Justice. If we can mark this Exhibit

1 11.

2 (McCart Exhibit No. 11 was identified
3 for the record.)

4 THE WITNESS: I'm not finding --

5 MS. TUCKER: We'll worry about that later.

6 BY MR. BELINFANTE:

7 Q. What don't we try to do here, just for the
8 ease of record, is put the cover page, and then there
9 will be specific pages behind. So there's not a
10 question about the source of the document. And I've
11 got a copy of it with me if we need to check it,
12 but --

13 A. You've got a copy of the book?

14 Q. Yes. I hope you get royalties from the
15 articles, too. Page 1, which is in this Exhibit
16 Number 11.

17 A. Mm-hmm.

18 Q. Talks about, at the beginning of the book,
19 "There is confusion, there is sadness, and there is a
20 restlessness. Mental health services are being
21 stretched to the limit as our country, grappling with
22 economic instability, political unrest, and a violent

1 scourge of deadly school shootings, searches for the
2 answers. Within this storm of uncertainty, and in
3 direct response to it, we call for sweeping systems
4 change in education."

5 Do you see that?

6 A. I do.

7 Q. This book was published when? I need to
8 look. Here it is.

9 A. And tabbed.

10 Q. This book was published, copyright 2023,
11 so this year. Does that sound right?

12 A. Yes.

13 Q. So is that statement still true?

14 A. Yes.

15 Q. That mental health services are being
16 stretched -- I'm sorry, you said yes?

17 A. Yes.

18 Q. Okay, perfect. Then I don't have to keep
19 going.

20 Also true, then, that our system of
21 education is strained, our teachers and school
22 leaders are exhausted.

1 A. Yes.

2 Q. Let's look at page 71 of the book, which
3 we'll mark as Exhibit 12.

4 A. Are we done with this one?

5 Q. Yes. And some of these do not get the
6 page printed on them, but again, if we want to check
7 it, the book's here.

8 (McCart Exhibit No. 12 was identified
9 for the record.)

10 BY MR. BELINFANTE:

11 Q. My question here, because this is 2023, is
12 in the third full paragraph. It begins with the
13 sentence, "To be clear, putting MTSS in place in a
14 school is not easy."

15 Do you see that?

16 A. I do.

17 Q. Do you still agree with that statement,
18 sitting here today?

19 A. Yes.

20 Q. The last sentence of that paragraph reads,
21 "This system differs so substantially from
22 traditional models of school that it requires

1 organizing and adopting new practices, which means it
2 takes time to install and implement with measurable
3 fidelity."

4 Do you see that?

5 A. I do see that.

6 Q. Agree with that, sitting here today?

7 A. Yes. To be clear, when it says, "This
8 system," it may or may not -- may or may not be
9 referencing just MTSS. I would need to see the other
10 parts of this to know for sure what it's referencing.

11 Q. Well, that whole paragraph only talks
12 about MTSS, right?

13 A. Yes, but this whole book talks about a lot
14 more. And I don't know if this sentence is about the
15 book or if it's about MTSS.

16 Q. What would help you answer that question?

17 A. The book.

18 Q. Unfortunately, as you know, we're running
19 short on time for that. Let's look at page 110 of
20 the book, which we'll mark as Exhibit 13.

21 (McCart Exhibit No. 13 was identified
22 for the record.)

1 BY MR. BELINFANTE:

2 Q. Page 110 is in the Chapter 5, Leading With
3 Equity. The first full paragraph beginning, "Popular
4 feel-good stories about 'principal heroes' who turn
5 around struggling schools in a year do a great
6 disservice to educators. The reality is that an
7 average school transformation process requires five
8 to seven years to complete," citing Fullan from 2001.

9 What is the transformation process you're
10 talking about there, do you know?

11 A. I'm not sure what Fullan is referencing,
12 but my guess -- and I shouldn't guess, but it is just
13 a guess, that he is referencing transformation in
14 California schools. That can mean anything from
15 implementation of PBIS strategies in broad measure
16 within a school. It can mean implementation of MTSS.
17 It might mean implementation of a new curriculum.
18 Any educational initiative.

19 Q. Okay. Did you look at the rates of
20 principal turnover in Georgia as part of your
21 analysis?

22 A. For general education --

1 Q. Yes.

2 A. -- schools?

3 Q. Yes.

4 A. No.

5 Q. Okay. In the context of your book, Build
6 Equity, Join Justice, the phrase "equity leader"
7 appears.

8 A. Mm-hmm.

9 Q. What is an equity leader?

10 A. I would need the book to articulate that
11 at this time of day.

12 Q. Okay. Fair enough.

13 A. Just to be honest.

14 Q. I appreciate the honesty.

15 A. I'm sorry.

16 Q. That's fair. Let me go ahead and mark
17 this anyway, Exhibit 14.

18 (McCart Exhibit No. 14 was identified
19 for the record.)

20 BY MR. BELINFANTE:

21 Q. I think we have just looked at 110. This
22 is page 111. And the first full paragraph starts,

1 "The list of topics to be addressed as an equity
2 leader is long, and these ways of thinking and being
3 require a great deal of work to make equity happen."

4 Is it your recommendations in your report,
5 do they require equity leaders as described here on
6 page 111?

7 A. No.

8 Q. Okay. It continues, "Based on our work
9 with leaders from varied backgrounds all over the
10 United States, equity leaders who embrace MTSS for
11 development of the structural elements of the school
12 are able to give their attention to the important
13 relational factors that are at the heart of an equity
14 ecosystem."

15 Do you see that?

16 A. Did you start with, "Based on our work"?

17 Q. I did, yes, ma'am.

18 A. Yes, I see that.

19 Q. Okay. Is your report recommending MTSS
20 for development of the structural elements of the
21 school?

22 A. My -- you're asking is my report?

1 Q. Yes.

2 A. My report is recommending building state
3 capacity regarding guidance, vision, and
4 implementation for -- implementation of MTSS or a
5 system of support.

6 Q. What is the vision that you're
7 recommending the State Department of Education adopt?

8 A. That vision is included -- if you'll allow
9 me a moment.

10 Q. Sure, take your time.

11 A. My vision is located in two places. One,
12 if you look at page 160, where we talk about -- or
13 161, where we talk about -- where I talk about the --
14 I'm sorry, 162, the elimination of statewide systemic
15 segregation of students with behavior-related
16 disabilities for the GNETS program, and the provision
17 of fair and equal access to educational opportunities
18 for students with behavior-related disabilities.
19 That's part of the vision that I would hope that the
20 state would consider.

21 Beyond that, the rest of the vision I
22 would hope that they would consider is included in

1 the five recommendations and the conclusion of the
2 report that -- and where I state, I believe in the
3 educators in the State of Georgia, and I believe that
4 these educators can and will refine practices to
5 support students with behavior-related disabilities
6 who have been marginalized for far too long through
7 systems of segregation and unfair and unequal
8 educational opportunities. It is my hope that the
9 state adopts a vision with guidance from these
10 actions to do those things.

11 Q. Looking at your amended Appendix E,
12 Exhibit Number 2.

13 A. I didn't hear you.

14 Q. I'm sorry, looking at your amended Exhibit
15 E, Exhibit 2.

16 A. I think I'm missing -- that might be one I
17 lost track of here in the pile.

18 MS. TUCKER: Are you okay with her looking
19 at mine?

20 MR. BELINFANTE: Sure, that's totally
21 fine. Yeah, thank you, by the way.

22 BY MR. BELINFANTE:

1 Q. Did you find in any of the deposition
2 transcripts that you've identified here where a state
3 official testified that they support systemic
4 segregation of students with behavior-related
5 disabilities?

6 A. I can't recall --

7 Q. Okay.

8 A. -- what I read in thousands of words of
9 transcripts of depositions.

10 Q. That would kind of stick out, though,
11 wouldn't it, if a state official said, I support
12 statewide systemic segregation of students with
13 behavior-related disabilities?

14 A. I don't know.

15 Q. Okay. Did you find any state official
16 testifying that they opposed providing fair and equal
17 access to educational opportunities for students with
18 behavioral-related disabilities?

19 A. I don't recall --

20 Q. So --

21 A. -- at this time.

22 Q. Is it your testimony that the State of

1 Georgia currently has a vision that supports
2 statewide systemic segregation of students with
3 behavior-related disabilities?

4 A. That they have a vision?

5 Q. Yes.

6 A. Of statewide systemic segregation?

7 Q. Yes. That they have adopted a vision of
8 statewide systemic segregation of students with
9 behavior-related disabilities.

10 MS. TUCKER: Object to form.

11 THE WITNESS: The state has a system of
12 statewide segregation with unfair and unequal
13 educational opportunities that is unnecessary and
14 inappropriate for students with behavior-related
15 disabilities, and does not provide the services that
16 it purports to provide. So it's not a vision. It's
17 actuality.

18 BY MR. BELINFANTE:

19 Q. Is it your testimony that that's
20 intentional?

21 MS. TUCKER: Object to form.

22 THE WITNESS: I cannot speak to the

1 intentionality of what any person is doing. It
2 certainly does exist.

3 BY MR. BELINFANTE:

4 Q. I'm going to show you what we'll mark as
5 Exhibit 15, which is a screenshot from the SWIFT
6 Education Center.

7 (McCart Exhibit No. 15 was identified
8 for the record.)

9 BY MR. BELINFANTE:

10 Q. On your bio, you can see it says,
11 "Unwavering. Radical. Mama."

12 A. Mm-hmm.

13 Q. Are those your words?

14 A. Yes.

15 MR. BELINFANTE: If you will give me five
16 minutes to wrap up. How much time do I have? Like,
17 three minutes?

18 THE VIDEOGRAPHER: Off the record at
19 18:15.

20 (Recess.)

21 THE VIDEOGRAPHER: Back on the record at
22 18:26.

1 BY MR. BELINFANTE:

2 Q. All right. We're back on the record.

3 Dr. McCart, I'm not going to ask you any
4 further questions unless the United States has
5 questions for you. I will, however, as I did with
6 Dr. Putnam, suspend the deposition pending any -- if
7 you were to file a report in response to Dr. Wiley.
8 And I realize the Department of Justice disagrees
9 with me on this, but we may ask the court for an
10 opportunity to revisit for all of nine minutes your
11 testimony. And we would do so virtually.

12 MS. TUCKER: The United States has no
13 questions for Dr. McCart at this time. But we also
14 do object to holding this deposition open, and want
15 to make sure that's on the record.

16 MR. BELINFANTE: Sure. And expert
17 discovery closes October 31, now, based on the
18 amended report?

19 All right. We can go off the record.

20 MS. TUCKER: And Dr. McCart would like to
21 read and sign the transcript.

22 MR. BELINFANTE: Absolutely. Okay. And

1 on the record, thank you, Dr. McCart, for your time
2 today, and previous times that we've rescheduled.
3 I'm sorry you got sick as well. So I'm glad we were
4 able to do this.

5 THE WITNESS: Thank you. Me, too.

6 THE VIDEOGRAPHER: Thank you. And off the
7 record at 18:27.

8 (Whereupon, at 6:27 p.m., the instant
9 deposition ceased.)
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CERTIFICATE OF REPORTER

UNITED STATES OF AMERICA) ss:

DISTRICT OF COLUMBIA)

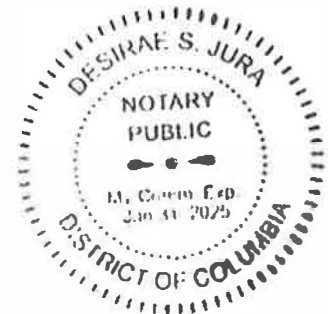
I, Desirae S. Jura, RPR, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically to the best of my ability and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any parties to this case and have no interest, financial or otherwise, in its outcome.



Notary Public in and for

The District of Columbia

My commission expires: 1/31/2025



Notice Date: 10/27/2023

Deposition Date: 10/24/2023

Deponent: Amy McCart, Ph.D.

Case Name: United States of America v. State of Georgia

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this ____ day of _____, 20__, and executed the above certificate in my presence.

NOTARY PUBLIC IN AND FOR

County Name

MY COMMISSION EXPIRES:

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